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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED OCTOBER 7, 1935.

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[fol. 1309] **Evidence Offered by Respondent**

Injunction Proceedings

STATEMENT AS TO EXHIBITS

Counsel for respondent then introduced Respondent's Exhibit No. 101, which is a certified copy of the decision of the District Court of the United States for the Western District of Missouri, St. Joseph Division, permanently enjoining the order of the Secretary of Agriculture, issued on July 20, 1931 as a result of the prior hearing in this proceeding (T. 1356). Counsel also introduced Respondent's Exhibit No. 102 which is a certified copy of the Final Decree entered by the same court in the same proceeding, permanently enjoining the said order of the Secretary of Agriculture. Counsel also introduced Respondent's Exhibit No. 103 which is a certified copy of the Findings of Fact and Conclusions of Law entered by the same court in the same proceedings. Counsel also introduced the following exhibits which were also exhibits in the same proceedings and which covered the following subjects:

Respondent's Exhibit No. in this proceeding	Petitioner's Exhibit No. in injunction proceeding	Subject
No. 104	No. 11	Net income for rate making purposes year 1930.
No. 105	No. 12	Net income for rate making purposes last three months 1930 and first nine months 1931.
No. 106	No. 13	Statement of gross income found to be reasonable for years 1928, 1930 and year ending September 30, 1931.
No. 107	No. 14	Statement of expenses per books and expenses found to be reasonable for years 1928, 1930 and year ending September 30, 1931.
No. 108	No. 15	Statement showing analysis of gross income from feed and yardage and comparison with restricted income for years 1928, 1930 and year ending September 30, 1931.
No. 109	No. 16	Statement of net income per books and net income found to be reasonable, deducting the diminution of income in yardage for years 1928, 1930 and year ending September 30, 1931.
No. 110	No. 17	Increase in expenses due to separation of St. Joseph Belt Railway Company and St. Joseph Stock Yards Company.

(T. 1358 to 1361, inc.)

[fol. 1310] Cost of Reproduction New and Less Depreciation

S. F. KOSTERS, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct Examination:

Qualifications

I reside in Brighton, Massachusetts, part of the city of Boston, and am employed as an appraisal engineer with Stone and Webster Engineering Corporation of Boston and have been since the latter part of the summer of 1932, when I severed my connections with respondent (T. 1362). Since 1930 I have been continuously so employed. As an employee of Stone and Webster I am engaged in appraisal and report work. I testified at the prior hearing when I was employed by respondent, leaving respondent in August or September in 1930. Up to the time I left respondent my employment was the same as at the time of the hearing. The Stone and Webster Engineering Corporation is a subsidiary of Stone and Webster, Incorporated. The Engineering Corporation, of which (T. 1363) the Appraisal Division is a part, and of which I am a member, has done an enormous quantity of construction work. An idea of this volume may be obtained by the statement that 400 contracts have been completed to date, aggregating approximately $1,000,000,000 of construction work. This work covers a field of public utility, industrial work, and office building construction. During the term, it is significant that, of the 400 contracts completed, more than two-thirds of them were repeat orders from clients formerly served. The purchasing power of the company, during the last 13 years, covers the tremendous amount of $300,000,000. The Ap-
[fol. 1311] praisal Division has been very active during this same period of time, having at the present time completed appraisals of approximately 1,200 properties aggregating some $8,000,000,000 of property (T. 1364). During the last 13 years, 400 properties have been appraised, of which 100 were in connection with rate cases. Appraisals have been made in all parts of the world, including the United States, Canada, Newfoundland, Mexico, France, Germany, Poland and Japan. The principal appraisals made may be classi-

fied as follows: for rate cases, financial program projects, sales management, income taxes, and insurance. In addition to our ordinary routine of appraisal work and reports, we carry on special studies which may be termed as research work in the following matters: fair rate of return, accrued depreciation, requirements for retirement reserve, and price trends. I have personally been in direct charge of appraisals aggregating over $128,000,000 of property and have assisted in appraisals to the extent of $193,000,000 of property, the latter figure being additional to the $128,000,000 (T. 1365). Of the appraisals of which I had direct charge, I would say offhand that probably 25 per cent in that connection represented appraisals involving rate cases, 50 per cent representing appraisals involving financing, and the balance represented miscellaneous types of appraisals, such as sales or purchases, management program, and miscellaneous smaller types. I was responsible for the entire carrying on of the work and had responsible charge of the final results of the work in those appraisals. That included preparing and pricing the inventory, pricing of so-called overheads in connection with the inventory, as well as the amount of depreciation existing in the property (T. 1366).

Since my connection with Stone and Webster I have made [fols. 1312-1314] an appraisal of the Sioux City Stockyards and a public stockyards at Cincinnati which I believe is called the Cincinnati Stockyards Company. Since the former hearing I have testified before the Interstate Commerce Commission, the Kansas City Public Service Commission, the Missouri Public Service Commission, and the District of Columbia Utilities Commission.

[fol. 1315] Depreciation

I believe I am familiar with the method used by Mr. Henrici in determining depreciation. I heard his testimony as to the method he followed.

I would say that, in general, the methods are identical, that is to say, we both subscribe to the general method of determining depreciation by actual inspection. The details of the methods, however, are not exactly similar, but to my mind if the approaches had been similar, the results in the use of the methods would have been the same. My approach to the determination of existing depreciation is an approach to an engineering determination, and for the purpose of

clarity, I would express it in terms of three factors. The first factor may be defined as deferred maintenance. By that I mean determination of the cost of restoration of the property to a physical operating condition. Under this heading, the calculation results in an answer which is equivalent to the deferred maintenance under normal (T. 1374) circumstances, that is, expenditures which would have to be made because of some operating failure. It is in the nature of the running down of the property. The expenditures which are provided under this head should be considered to place the property in an efficient operating condi- [fol. 1316] tion. It is very capable of being estimated with considerable accuracy.

The second factor to be considered is what might be termed restoration expenditure. By this I refer to the cost to restore the property to a condition that would be substantially as good as new. This restoration expenditure starts with the situation after deferred maintenance has been provided for. It covers all the additional deterioration which could be remedied by repair, irrespective of whether it would be prudent to make such repair. To my notion, this class of expenditure would not improve the operating efficiency of the property. Neither would it improve the character of the service rendered by the property. An expenditure of this type might be considered in the light of being economically unjustifiable. This factor of restoration expenditure is also capable of being estimated with considerable accuracy.

Now, the third factor entering into existing depreciation might be termed unrepairable deterioration. And this provides for an allowance for such items which cannot be restored to a condition which would make the property as good as a property which was replaced 100 per cent; but it provides for the bringing back to the equivalent of physical perfection. It provides, I might say, for (T. 1375) an allowance for the physical deterioration of the property which still remains after the first two factors have been taken care of. It may better be defined as an abatement which would be economical between a buyer and a seller, in order to compensate the buyer, who would have a choice between the property as is, and a property entirely new. Of course, it implies a necessity for a larger or an earlier expenditure in maintenance on the part of the buyer, did he purchase. This item is capable of being estimated, al-

[fol. 1317] though obviously to no such degree as the factors explained as first and second.

I believe that if all three of these possible expenditures, the first two being expenditures, the second being in the nature of an allowance or abatement, were summed up, that it would give you a complete measure of the difference between the given property as is, and an identical new property. The purchase of any property, or this property, in particular, with an abatement equal to the sum of the three expenditures detailed, would make the property identically equivalent as a property new, hypothetically new, with no abatement. I determined the existing depreciation by making estimates of each of the three main factors about which I have elaborated (T. 1376). In regard to the so-called yard structures, by that I mean pens, fences, gates, paving and items of that nature, I grouped them to the extent that they would reflect in groups the same relative condition. In other words, I might have found in one instance a group of five pens which were necessary to segregate, or, as in another group, I might have found 50 pens were very similar in condition and could be grouped as to classification. Then the various items in that group of pens were individually analyzed (T. 1377) and the sum was totaled by using the three separate estimates to which I have testified. A building required a little more detail. It required breaking it down into its principal component parts and analyzing the individual component parts. By that I mean, for example, in arriving at the abatement allowance, which I spoke of as factor 3, I considered in general all wooden floors. I didn't analyze each room as an individual floor, but, of course, in this particular property, I had the advantage of having great familiarity with it, and it consumed nowheres near the amount of time that [fol. 1318] it would have consumed, had the property been strange to me. That familiarity was derived from my years of service as Chief Engineer for respondent. In determining depreciation, certain other factors such as obsolescence, inadequacy, and things of that nature are oftimes given recognition by appraisers and I, myself, always give consideration to them in any analysis made for the determination of existing depreciation. However, in my opinion, they are elements (T. 1378) which should not be considered as affecting the answer arrived at in the determination of existing depreciation. If an item of prop-

erty has become entirely obsolete or inadequate, it is my belief that it should not be found in the inventory. If it has reached a point of apparent partial obsolescence, it then becomes a question of economic value. In other words, it becomes less efficient, and under a given set of competitive conditions, the economic value of the less efficient item depends considerably upon its operating cost, as compared with the total operating and fixed charge costs of a proposed item, the difference between one and the other being the amount available for the capitalizable fixed charge on the less efficient item. Any estimate of partial obsolescence, I believe, would be impossible to sustain, except possibly in rare instances. Full consideration was given these items in respect to depreciation but no effect was found in the answer at which I arrived. The effect was reflected in the idea of whether the property was used and useful. I gave no consideration to the so-called service life theory whereby an attempt is made to estimate depreciation by an estimate of the percentage of the age to the total estimated life. I believe Mr. Henrici gave no consideration to that method either. The depreciation I was attempting to determine was existing depreciation (T. 1379). It had no reference to a theoretical life and contained no element of the theory [fol. 1319] in my approach to the subject. I would like to emphasize the fact that I think the method which I have used and which Mr. Henrici, I am sure, also used, are identical methods. I believe the results are different, entirely because of the difference in the approaches. I believe my approach to the subject has been an approach to an engineering determination. I hesitate to criticize somebody else's method or approach to a method, but it appears to me that the approach which Mr. Henrici has taken is wide open to possibilities for great error. I might state that it has been criticized in many instances and has even been called, instead of calling it an inspection method, has been called a gazing method. If the so-called inspection analysis made in a man's mind by this method of determination could be 100 per cent accurate, then I am sure that his answer and my answer would have been identical. However, I do not believe that the general scope of his approach permits of any engineering determination. It is merely judgment, and judgment over all in each instance. I heard Mr. Henrici's testimony as to how he obtained the condition per cent for each item by the use of various office assistants (T. 1380).

I have examined his appraisal in which these estimates of condition are shown. I think the results which I obtained from a study of Mr. Henrici's exhibit will bear out what I have just finished saying in my last statement, that it is entirely dependent upon the individual's over all judgment, and, in this particular case, I find that by using general averages of the estimates made by five individuals, that, upon analysis of the individual results, if any one individual's result had been used, we would arrive at a very different answer than the average produced. It shows, to my mind, that, in particular, two men who were working [fols. 1320-1331] under the same instructions had very decided and different views to the approach of the situation. For that reason, I believe that the very system used proves itself to be wrong. Using the results of one of the investigators, we arrive at an average condition of the entire property of approximately 81 per cent. That was investigator number four who, I think, is Mr. Schramm (T. 1381). Mr. Schramm probably should have better knowledge of the property than any one of the five men who made the inspection. During my association with Mr. Henrici and his assistants, I am sure that Mr. Schramm has spent by far the greatest amount of time on the property, that is, made more serious investigations than any of the other men associated with him in this investigation. He is one of the two that took part in similar determinations at the time of the last hearing in 1929 (T. 1382). If we considered one of these other investigators, number three, for example, and had used the results of his determination, we would have arrived at an answer of 69 per cent. Now, to my mind, the accrued or existing depreciation of that property can certainly be determined closer than 12 per cent, which is the spread between those two men. I think it very plainly points out the weakness of the approach. From my experience, either one could be right with that much variation between the two, but both could not be right. If one of them is right, the other one has had the effect of making the answer used in the exhibit wrong. That much difference in condition per cent, assuming one of them is right, would clearly indicate that the other one was extremely wrong, one of them was qualified and the other disqualified. Using the wrong one to balance or average the right one would likewise produce an erroneous result (T. 1383).

[fol. 1332] Land Values

Cost of Filling Land of Respondent

I was in my twelfth year as Chief Engineer when I severed my connections with respondent. During that time I was in charge of the engineering records of respondent which were quite complete. I had charge of the files and at certain periods I changed the filing system of those records. Since leaving the employ of respondent, I have had occasion to refer to those engineering records from time to time and they are still filed in the same manner they were when I left (T. 1401). Since arriving at St. Joseph this month, I have again examined these records to some extent. I discovered in those engineering records a map which showed the elevation of respondent's land prior to the construction of a portion of the present stockyards.

Respondent's Exhibit No. 113 is a photostatic copy of a map which has written across it "No. 79" which either I or my assistant wrote there at the time I was changing the filing system, which indicates that it was file number 79. The number that it previously bore, number 61, was written by L. R. Sack, former General Superintendent of the stockyards (T. 1402). Respondent's Exhibit No. 113 is the photostatic copy of the old map which is in the engineering records of respondent.

I had J. R. Leslie of Leslie Engineering Company, St. Joseph, make a topographic survey of the land of respondent as it is today (T. 1403).

[fol. 1333] J. R. Leslie, a witness called by respondent, being first duly sworn testified in substance as follows:

Direct examination:

I live in St. Joseph and am a civil or professional engineer, being owner and operator of the Leslie Engineering Company. I am also County Highway Engineer in this County, Chief Engineer of Big Tarkio Drainage District, Consulting Engineer for the Missouri Valley Drainage District, and the Little Tarkio District. I have been first vice-president and was last week re-elected for the third year of the Missouri Highway Engineers Association of this

State (T. 1404). I am a graduate of Armour Institute of Technology, class of 1906, and a graduate of the St. Joseph School of Electrical Engineering, 1909. Since that time I have been continuously following my profession as a civil engineer.

I made a survey of the entire property of respondent at about the time of the sale of the land to the St. Joseph Belt Railway Company. The map which was made as the result of that sale is dated March 1, 1930 (T. 1405) and bears the name of my company, Leslie Engineering Company. Copies of that map have been supplied to respondent (T. 1406).

Respondent asked me the latter part of last year to make a topographic map of the stockyards as at the present time. That required the making of a topographic survey. We ran levels over all of the lands owned by the St. Joseph Stock Yards Company, and taking readings as shown upon the map wherever there was a marked or abrupt difference in elevation of the surface of the land, we took readings at those points, and in the flat or uniform surfaces of the lands, we took them not to exceed 300 feet in distance between them over the entire area. Respondent's Exhibit No. [fol. 1334] 114 is the map I prepared as a result of that survey (T. 1407). On it I tabulated the elevations resulting from the survey. I personally made the survey and platted the map. It truly and correctly sets forth the elevations as determined by me by actual survey. The datum of the survey was above sea level.

I have seen the tracing of the original from which the photostat, which is Respondent's Exhibit No. 113, was made. I saw it first when Mr. Black, superintendent of respondent, handed it to me (T. 1408). The elevations on that map are shown above St. Louis directrix. It is possible to transpose that map to the basis of sea level datum (T. 1409). Mr. Kosters asked me to do it and I have done it. Respondent's Exhibit No. 115 is of the same scale as Respondent's Exhibit No. 113 and the elevations are indicated at the same places but have been raised to sea level for datum so as to make possible a direct comparison between Respondent's Exhibit Nos. 113 and 114. Raising the elevations to sea level elevation is really a matter of mathematical computation by the addition of a constant shown on this photostat map, Respondent's Exhibit No. 114, 412.731 (T. 1410). Respon-

dent's Exhibit No. 115 truly and correctly sets forth in terms of sea level the same elevations at the same points as indicated on Respondent's Exhibit No. 113. In addition to what is shown on Respondent's Exhibit No. 113 I superimposed on Respondent's Exhibit No. 115 the outlines of respondent's land Zones A and B. I had previously prepared land maps showing the lands of these zones. The outlines of these zones are shown by the heavy white line on Respondent's Exhibit No. 115 (T. 1411). Respondent's Exhibit No. 115 is on the same scale as Respondent's Exhibit No. 114, 200 feet per inch, but on a different scale from Respondent's [fol. 1335] Exhibit No. 113 which is 100 feet per inch. I merely changed the scale on Respondent's Exhibit No. 115 so that it would be of the same scale as Respondent's Exhibit No. 114. That is not an unusual thing to do and I do it from time to time in the practice of my profession (T. 1415). It has been truly and accurately done. In preparing Respondent's Exhibit No. 114 I used the basic map which I had already prepared of the land of the Stock Yards Company and that shows the various zone outlines which I had previously prepared.

Cross-examination:

Referring to Respondent's Exhibit No. 113, I know nothing whatever about that exhibit except such as appears on the face of the map. I do not know when it was made or by whom, or whether the elevations are correct or incorrect with the exception of one point, which are common points, on Repondent's Exhibit Nos. 113 and 115. That point is on the railroad tracks (T. 1416). I think that the elevation of the railroad tracks as shown on these two exhibits are the same and the thing I want to make myself clear on there was that all those points, which are elevations on the Atchison, Topeka and Santa Fe Railroad tracks where it crosses Illinois Avenue are the same on the two exhibits. Comparing these elevations to the present elevations of the ground as shown on Respondent's Exhibit No. 114, there is only a difference of 3/10 of a foot and that is the only thing that I have on the two maps to check with and that checks fairly closely. The railroad track at that point is now 3/10 of a foot higher than it was at the time Respondent's Exhibit No. 113 was prepared, assuming of course that the figures stated on Respondent's Exhibit No. 113 were accurate when the ex-

[fol. 1336] hibit was made. As to that I do not know (T. 1417).

S. F. Kosters, a witness previously called by respondent and sworn, being recalled, testified in substance as follows:

Direct examination:

I heard the testimony of Mr. Leslie and previous to his testimony I was familiar with the facts he stated. I have had occasion to examine and study the three maps which are Respondent's Exhibit- Nos. 113, 114 and 115 (T. 1418). These maps in general show that since the map which is Respondent's Exhibit No. 113 was made there has been considerable fill put on the lands of respondent. Where there is paving on the land of respondent at the present time the elevations shown on Respondent's Exhibit No. 114 would be on top of that paving. I heard the testimony of Mr. Henrici as to the depth of the paving and the only thing I would add is that I would like to fix a maximum which could have been used in respect to the figures which Mr. Henrici gave. I have considered the maximum thickness of the super-structures upon the land being approximately 5 inches. I am familiar with the depth of the paving, having had charge of laying a considerable portion of it and being in direct contact with the maintenance of the balance. No cinders are included in the paving in my inventory, nor in Mr. Henrici's (T. 1419). By cinders, I mean cinders as a base for paving. From Respondent's Exhibit Nos. 115 and 113, taken as one, compared to Respondent's Exhibit No. 114, I have been able to compute the difference in the elevations as shown, excluding the depth of paving (T. 1420). I could not do this for the entire property be-
[fol. 1337] cause Respondent's Exhibit No. 113 does not show elevations for the entire property. I was limited in my comparison of the exhibits to the limit to which elevations are shown which constituted all of Zone A and a good portion of Zone B. I have computed the average differences existing on Zone A as shown on Respondent's Exhibit No. 115 in relation to Respondent's Exhibit No. 114, and I find that the average elevation of the ground at the present time is approximately 3.6 feet higher, which means an average fill has been placed in of 3.6 cubic feet per square foot of

area. For Zone B it is 1.6 cubic feet of fill per square foot of area. I have estimated the present cost of making this fill (T. 1421). I estimate it would cost $1.00 per cubic yard to place the fill in the quantity required at the present date or as of August 1, 1932. That cost was based on the assumption that dirt in this quantity would have to be hauled to the property from approximately the same location in which it was originally hauled or a location known as King Hill adjacent or in the vicinity of Missouri Avenue. I based my estimate on the assumption that the dirt would be excavated from that hill by power excavators, loaded by power into trucks suitable for hauling that class of material and hauled to the respondent's property on the basis of an average haul of three-quarters of a mile and from those facts, and knowing the rates of rental or use of equipment and the rates of men required in this class of work, I have concluded that one dollar per cubic yard would be a minimum cost of this work (T. 1422). I have also estimated the cost of making the fill per square foot of land area in Zones A and B. For Zone A this would be approximately 13½ cents per square foot, and for Zone B approximately 6 cents a square foot.

To a limited extent I had charge of making some of [fol. 1338] the fill in Zones A and B. My particular memory goes to the construction of the new truck hog division in which considerable fill was made on Zone A. However, this fill was made at a greater expense than I have estimated, as it was principally made from cinders. However, the cinders served no purpose. It was merely a substitute fill. Earth would have served the same purpose. I also had charge of some other slight amount of filling. I don't remember the exact locations or my exact connections with it. I remember somewhat of a fill in connection with the building of a new truck cattle division, something in connection with the building of the new truck sheep division, but just the extent of that fill, I am not prepared to say (T. 1423). Other than Zones A and B the other land zones west of the railroad tracks have not been filled in the strict sense of the word. They have been graded to some extent, necessitating both cuts and fills, but in those instances the one balanced the other. I believe in no instance was any outside fill brought on to the land outside of the zones indicated. If structures similar to those on Zone A were con-

structed on the entire Zone C, in my judgment the land in Zone C would have to be brought to the approximate grade of Zone A which would necessitate an average fill of two feet over the entire area of Zone C. This fill would have to be brought from approximately the same location as I have anticipated bringing it for Zones A and B in case of a reproduction which would be from King Hill (T. 1424). The cost of bringing that fill would be approximately the same, which would make the cost 7½ cents per square foot for the entire Zone C. If the same questions were asked me about Zone D as Zone C my answer would be the same as to the necessity of fill and 1.3 cubic feet would be required at a cost of 5 cents per square foot. The same would be true as to Zone E at an average cost per square foot of 5 cents [fol. 1339] (T. 1425). The same would be true of Zone F necessitating approximately 1.6 cubic feet of fill per square foot at an average cost of 6 cents per square foot (T. 1426). The same would be true of Zone N and there would be approximately five cubic feet of fill per square foot of area at a cost of 18½ cents per square foot.

Threat of Floods

I heard the testimony of Mr. Zelinski as to the threat of flood conditions to the stockyards. I have been familiar with flood conditions in St. Joseph and in that vicinity for the past 15 years. Referring to page 11 of Government Exhibit No. 128, Whitehead Branch is to no extent a threat to the lands of respondent because the topography existing between the overflow of sections of Whitehead Branch and the stockyards naturally does not permit of damage to the stockyards land by waters from this source. Whitehead Branch troubles always occurred north of a range of hills which are west of 6th Street and King Hill Avenue, and which range runs out on the southerly side of Whitehead Branch. I mean by this, that the overflow of waters are north of the range of hills referred to. The damage which has been done by overflows, as to Whitehead Branch has always been directly on a line from the overflow portions to the Missouri River. I recall particularly the flood waters of 1925 and the damage which the overflows of Whitehead Branch caused at that time (T. 1427). I believe these flood waters were in June, 1925, although Mr. Zelinski has referred to it in his report as 1923. Undoubtedly

Mr. Zelinski spoke of the same flood that I have reference to, whether the year was 1923 or 1925; it is simply vague in my memory now. However, regardless of the year, I [fol. 1340] was familiar with the flood at that time. I was also engineer for the Union Terminal Railway, in conjunction with being engineer for the St. Joseph Stock Yards Company. I recall, very vividly, the damage which was caused by that overflow, but damage was entirely to the Union Terminal property, no waters from that flood ever reached the stockyards area (T. 1428). Apparently 1923 was the date of the overflow referred to and is the same overflow of which I am making my explanation. If the stockyards lands were in danger from any such overflow as described by Mr. Zelinski on pages 11 and 12 of Government Exhibit No. 128, it would necessarily mean that the water must first pass over the yards and shop areas of the Burlington Railroad. It is impossible for the waters to follow the line of 6th Street and down King Hill Avenue, because the contour just would not permit of it. It would have to extend down the Burlington right-of-way, that is the only way in which it could be reached, and, to my knowledge, the Burlington right-of-way has never been menaced by any waters, and, if they were not menaced, it would be impossible for the stockyards to be menaced, which are three miles further south (T. 1429). The menace that has occurred in years gone by has never been from the northerly direction, it has always been from the southerly direction. The statement on page 12 of Government Exhibit No. 128 that in 1923 water overflowed from Whitehead Branch and ran across and over the stockyards property down to Brown's Branch is not a true statement. The only method by which that could occur would be for it to entirely cross the stockyards areas, first, over the Burlington areas and then through the stockyards areas to reach Brown's Branch. This has never occurred in my fifteen years of experience with the Stock Yards Company. That occur- [fol. 1341] rence which is related there as having been in 1923 did not occur. I was chief engineer of respondent and also of the Union Terminal at that time and I am sure I would have gained knowledge of it had it occurred. In fact, I know it would have entailed (T. 1430) considerable work for me which it did in connection with the Union Terminal. As I recall, I worked practically day and night for about

five days and nights in order to get the Union Terminal in service again.

Referring to the threat of unusual flood waters from Contrary Creek mentioned on page 12 of Government Exhibit No. 128, Zones F, G, H, and I are not exposed to unusual flood waters from Contrary Creek at the present time for two reasons, first, the threat was obliterated when Brown's Branch drainage canal was redug, and secondly, the overflow of Contrary Creek itself is practically no menace anymore, due to work which has been done on Contrary Creek. Even before the completion of the digging of an outlet to the Missouri River, Contrary Creek has been a constant source of worry in years gone by and considerable work has been done on it in the nature of straightening out two bends and leading the waters to an outlet through Contrary Creek itself, which damaged Contrary Lake to a great extent and the recent move has been more of a salvation for Contrary Lake than it has to stop the menace to the north which would include the stockyards land (T. 1431).

When I stated a moment ago that the threat of flooding of the stockyards always came from the south, I referred to the Contrary Creek menace which is a past condition, having been eliminated by the facts I have stated, which are the changes in Contrary Creek and the improvement of Brown's Branch. I heard the questions asked Mr. Zelinski and the answers he made about dikes built across the farm [fol. 1342] land south of Zone F. I know such dikes exist. Their existence has a material effect on the threat of flooding by Contrary Creek. They stopped the normal overflow of lands at the point of the dikes so that it took an extremely high water to still remain a menace to the lands north of these dikes, they being located roughly about a quarter to a half-mile south of the stockyards lands (T. 1432). Those dikes were built by land owners down there to protect their lands north of the dike. They ran in height from nothing up to a maximum of eight or ten feet. I would like to correct the assertion made by Mr. Zelinski in regard to the washing out of a culvert on Memorial Highway at the time of high water. That was not a fact. The culvert was not washed out, the culvert was insufficient in cross section to take the miscellaneous material which came down Contrary Creek during flood times, and

for that reason the opening of the culvert would become clogged and not permit water to pass. That caused, in some instances a flooding of the creek, but that was a very severe menace to the Burlington Railroad and a severe menace to the highway, and a severe menace to the adjoining property owners. The State Highway Commission improved that condition some years ago by building a new and enlarged culvert, and that also had its effect on improving the situation in regard to the stockyards.

I heard the statement made by Mr. Zelinski as to water standing on Second Street in times of rain (T. 1433). I knew of the situation and then in order to confirm my own convictions I have since investigated it by going down to the site to confirm my belief in the matter. Mr. Zelinski's impression of the whole situation down there was in error. The four-foot sewer, which he testified about, was not built for any purpose of drainage west of Second Street. The [fol. 1343] purpose of that sewer was to relieve the Burlington's Second Street yards in times of excessive rain fall. The drainage area east of the Burlington's Second Street yards had no relief outlet. It was dependent upon the normal street inlets to take care of the excessive flood waters, which were far insufficient during many storms, and the Burlington yards were materially damaged. The city, probably, because of pressure by the Burlington Railroad, decided that they could have relief from this situation, and built a four-foot sewer from the east side of the Burlington right-of-way across that right-of-way across and under Second Street, and across lands between Second Street and respondent's lands, which, I believe, now and even then were principally owned by the Burlington Railroad, and they have obtained an easement for the laying of this sewer across the respondent's land to the Missouri River (T. 1434). This sewer was never designed to take off any flood water west of the Burlington tracks, adjoining Second Street on the east. The purpose, as I have stated, was relief for the Burlington. Now, in doing this, they paid no attention to the situation west of the Burlington tracks or from Second Street west to the River for drainage; at another time, the paving on Second Street at this point was resurfaced, and at the time of resurfacing, again no drainage was provided, except for the fact that certain swales were built in the pavement in order to allow

the running off of rain water from the surface of the pavement. After this 4-foot sewer was installed, and in conjunction with considerable complaint by citizens of the danger involved in the swales, so to speak, which were built in the pavement, the city decided, under pressure from the stockyards principally, that it would be well to change the surface of these streets, taking out the depressions or swales, as I have referred to them, and in doing this, it [fol. 1344] was necessary that some arrangement for drainage be made. Apparently, they did not have the funds with which to properly drain the streets, but they made a makeshift arrangement by having these points of depression drained to a very temporary sort of an arrangement, by digging a small ditch leading to First Street, immediately west of Second Street. At the point where this ditch came into First Street, a sizable inlet catch basin was constructed with the idea that all waters, and this only refers to rain waters, flowing on the pavement of Second Street, would be accumulated in this catch basin, and, from there, a connection was built to the 4-foot sewer for relief (T. 1435). The situation at Second Street does not menace the lands of respondent. In fact, the building of the 4-foot sewer permitted an improvement in respondent's lowest lands in Zone N by allowing respondent to tap that sewer with draining tile, making lands which before had been low and marshy to some extent, usable for cultivation. This 4-foot sewer does this properly.

Comparison of Various Transfers with Lands of Respondent

I heard the testimony of Mr. Zelinski as to the cost of giving the Grain Belt Mills a paved outlet. I have made what may be termed a rough engineering estimate of this outlet. I confined myself to the limits which Mr. Zelinski has placed on the outlet, that is, a one-way outlet from the Grain Belt Mills to the connection with the pavement at Packers Avenue and Lake Road. To provide this outlet, it would be necessary to build a hard surface pavement of approximately 200 yards long, and, at the very minimum, it would be necessary to make it three yards wide, which would entail 600 square yards of pavement at a minimum

cost, I would say, of $2.00 per square yard. It would mean [fol. 1345] $1,200. However (T. 1436) I do not think that a 9-foot pavement would be at all serviceable. It would not permit passage and in no wise would be comparable to the pavement with which it was intended to connect. I think that this should be at least 14 feet and, in that instance, the paving would cost a minimum of $2,000 (T. 1437).

I heard the testimony of Mr. Zelinski as to the amount of fill on the Larabee tract. I was engineer for the Union Terminal at that time, which was making certain improvements in the way of construction of new elevator capacity immediately west of the Larabee Mills tract. The Larabee Mills had previously purchased a tract of land immediately adjoining their former tract and had been considering for some time ways and means of putting that tract of land in a serviceable condition. It was necessary, of course, that they make connections with the Union Terminal for trackage, also with their existing tracks on the north of that parcel, and for this purpose it was necessary that the natural grade of the land which they had purchased should be brought to the approximate grade of the railroad and also their then existing plant land. At the request of the Larabee Mills officers, I worked out a scheme by which they were able to make a considerable saving by making that fill in connection with excavation work which was going on on the Union Terminal project. I arranged the negotiations and acted in a dual capacity for both the Union Terminal and the Larabee Mills in filling their lands, approving bills for payment on the cost of that fill, and (T. 1438) measuring the amount of fill. I do not remember the total figures of the fill but I do remember the average on that section was from 3 to 4½ feet in depth. That means that the minimum depth was three feet and the maximum depth 4½ feet approximately, the average being some place between three and four and a half feet.

[fol. 1346] I am familiar with the tract of land covered by sales sheet No. 10, being a tract acquired by the Union Terminal from the trustee of the Stock Yards Company and later two individual portions were leased, one to the Shell Oil Company and the other to the Painter Oil Company. Those leases were covered by sales sheets 19 and 20 (T. 1439). The Union Terminal had to make an expenditure on the portion of this tract leased as covered by sales sheets

19 and 20. I was responsible for developing the trackage into those leased areas and was responsible for the laying out of the work and the cost of the work, acting as engineer for the Union Terminal. I don't distinctly remember the total expenditures of the Union Terminal although I do remember that the cost of that trackage to the Union Terminal amounted to about $5.00 per lineal foot of the trackage. The distance was approximately 1,000 feet which at $5.00 a foot would make the entire expense approximately $5,000 to the Union Terminal (T. 1440). The Shell Oil Company filled about one-third of its leased area to the approximate grade of Lake Road. The Painter Oil Company did the same with respect to about one-fourth of its leased area. The Shell Company were required to put in approximately four to five feet of fill and the Painter Company three to four feet. As I compute it, the total area of the Shell lease is 52,200 square feet, one-third of which would be 17,400 square feet or 1,950 square yards at an average depth of 1½ yards would make a total fill of approximately 2,900 cubic yards (T. 1441). For the Painter tract the fill would be approximately 280 cubic yards.

Advantages of Present Construction of Stockyards

I believe I am about as familiar as anybody on earth with the present construction of the stockyards. I had close to 12 years to acquaint myself with the details of it and [fol. 1347] I believe I obtained a thorough knowledge of the construction. I think I had great opportunity to note and observe whether or not the construction had advantages or disadvantages from the viewpoint of operations (T. 1442). First of all, no one could have the intimate contact with the stockyards in general that I have had without becoming acquainted with the operating requirements of *that* yards. All of my work in connection with new construction or changes in construction of the yards has had as its very foundation the subsequent economy in operation. During all of those years, I was always in consultation with the manager and the other operating officials of the yards, knew at all times their views on economy of operation, learned to have views of my own on the subject, and was sometimes consulted as to my views; in all instances the summation of the views which were to be

carried as a feature of any construction program were consummated on paper by me, and from those very sources I felt myself more or less familiar and qualified to at least form a very definite opinion about the operation of the stockyards. In the course of my duties I saw the daily operations (T. 1443). I felt that it was my responsibility to see that the lay-out of the St. Joseph Stock Yards was at all times an economic one although it may not have been a direct responsibility on my part. I felt that the direct responsibility lay with the manager although my connection with any projects affecting operations always required my knowledge of it and sometimes even my opinion. I have a knowledge as to whether or not the St. Joseph Stock Yards Company's present lay-out has any advantages. I know that the St. Joseph Stock Yards is constructed in such a manner as to make it without question of doubt the most economically operated stockyards in the United States. [fol. 1348] This is for two reasons, first of all, the shape of the ground on which the stockyards is constructed is the ideal shape for an economical stockyards. Secondly, the improvements, both their own and the kindred facilities needed in connection with the operation of the stockyards are most economically designed for an economical operation of that stockyards. I know further that other stockyards throughout the country have always considered this to be a fact. I know that they have sought the advice of the officials of the St. Joseph Stock Yards in laying out new facilities of their own, because they recognized the fact that the St. Joseph Stock Yards was ideally designed. I have been in many conferences or discussions in which the general advice of the officers and employees of the stockyards was sought. I either expressed my views directly or indirectly (T. 1445). By that I mean that between the manager and the operating officials and myself certain recommendations were made when sought by outside parties. By saying that the shape of the St. Joseph lay-out is favorable, I mean that the general shape of the yards is a rectangle of the correct width, which is the prime feature of its operation. The length is correct for its present requirements and permits of easy expansion. The general operation of a stockyards, if it is to be economically performed, is dependent upon lost motion. By that I mean that the movement of livestock from the time of its ingress

to the yards to its time of egress to the consumer should be held at a minimum. I believe that the St. Joseph Stock Yards embodies this exact feature. There is no lost motion in movement from the unloading of livestock to the time of ultimate disposal from the yards. I heard the testimony of Mr. Zelinski as to possible changes in event of the reconstruction of the yards (T. 1446). My opinion is if the so-called ideal yards were to be constructed today they [fol. 1349] would be designed in substance along the lines of the present St. Joseph Stock Yards Company.

Cross-examination:

Cost of Reproduction Less Depreciation

Qualifications

I am now employed by the Stone and Webster Engineering Corporation. There are several affiliated Stone and Webster corporations but I am only employed by the Engineering Corporation (T. 1447). That corporation does the construction work. I do not have anything to do with the construction work as such. My work is confined to the appraisal department. I might add that I would qualify that to the extent that my work brings me into contact with the Construction Division on very numerous occasions. The Construction Division acts as consultant to the appraisal department. I do not have anything to do with the making of purchases. The Purchasing Department, which is a part of the Construction Department, works very closely with the Appraisal Division. If we have a problem on which we feel that we need some help we may go to the Construction Department, of which the Purchasing Department is a part, and I would say that on all our problems we need help from the Construction Division (T. 1448).

Referring to the aggregate amounts found in appraisals made by the Stone and Webster Engineering Corporation, the greater proportion of those appraisals were made before I was connected with the corporation. Since I joined the organization the appraisal work done by the Appraisal Division has been between one and one and one-half billion dollars (T. 1449). I have been in direct charge of appraisals of property owned by the Pennsylvania Power and

[fol. 1350] Light Company, having headquarters at Allentown, Pennsylvania; the Kansas Power and Light Company, headquarters in Topeka; the Kansas Pope Line Company, headquarters in Salina, Kansas; Peoples Gas Company, somewhere in that vicinity, I have forgotten the name of the town of their headquarters; Richfield Oil Company, Los Angeles, California; Washington Gas Light Company, Washington, D. C.; Georgetown Gas Light Company, Washington, D. C.; the Washington Gas Light Company and the Georgetown Gas Light Company of Montgomery County, Maryland; the Richfield Oil Company of New York, headquarters New York City; Sioux City Stockyards Company, Sioux City, Iowa; the Central West Public Service Company, Omaha, Nebraska; all subsidiaries of the Central West Public Service Company, located in Nebraska, South and North Dakota, Minnesota, Iowa and parts of Canada, I don't remember the subsidiary names; the subsidiary companies of the Central West Public Service Company located in South Carolina; other subsidiaries of the same company located in North Carolina; it is very difficult for me to recall names of companies because of the fact that so many names are continually before me in the office, on which I do a certain proportion of the work (T. 1450). There are probably eight or ten other companies which I have not mentioned and where I was in direct charge of the work. In addition to the appraisal of the St. Joseph Stock Yards Company property and the Sioux City Stockyards Company property, I have been in connection with appraisals of stockyard properties at Cincinnati, Ohio, and Connellsville, Pennsylvania. These latter two appraisals were not made for rate-making purposes. The only appraisals for rate-making purposes I have made are of the stockyards at St. Joseph and Sioux City (T. 1451). I have been consulted to some extent on other stockyards as an [fol. 1351] engineer, but not employed by them. I have testified on the St. Joseph Belt Railway Company's case, both those in the basic valuation procedure and in recapture proceedings; testified in the Union Terminal Railway Company's basic valuation procedure, and testified in the Sioux City terminal. I am not sure whether it was a basic valuation or a recapture proceeding. I believe it was a basic valuation (T. 1452). The St. Joseph Belt Railroad and the Sioux City Terminal Railroad are both stockyard

railroads in so far as they serve stockyards interests. The Union Terminal at St. Joseph is a terminal railroad. All three of these railroads are not owned by stockyard companies. The capital stock of the St. Joseph Belt Railroad was owned by the St. Joseph Stock Yards Company and I believe, although I am not positive, that the capital stock of the Sioux City Terminal was owned by the Sioux City Stockyard Company at the time I testified. At the time I testified as to the appraisal of the Union Terminal property, the Union Terminal Company was just as distinct in its connection with the Stock Yards Company as it was distinct from the Santa Fe Railroad. My testimony before the Kansas Public Service Commission and the Missouri Public Service Commission has been in connection with appraisals of properties I have referred to. My appearance before the District Public Utilities Commission was not in connection with an appraisal. I had no intention of giving the impression that the experience of Stone and Webster in making appraisals in which I had had no part had in no wise added to my own qualifications in making appraisals. It is my view that the appraisals made, for instance, before I became connected with Stone and Webster have added materially to my qualifications to appraise property for rate-making purposes (T. 1454). That would not be true if I had not been employed by them. That is so because corporations or companies in any business, like [fols. 1352-1378] individuals, profit by experience. The experience which Stone and Webster Engineering Corporation has gained in the appraisal of eight billion dollars worth of property undoubtedly is a factor in its reputation for making appraisals today. The results of that experience have been incorporated in the present practices of the appraisal division of that company, and are passed down from day to day in the light of their experience by coordinators in summarized thoughts, and benefits derived from that very experience. I am fortunate to be handed the results of that experience without having gone through the laborious details of obtaining it. Where one is employed by an employer who has had vast experience in appraisal work he would be in a position to profit by that just like I have been able to profit from Stone and Webster's experience. The appraisal which has been offered in evidence as Respondent's Exhibit Nos. 111 and 111-A to a very great ex-

tent effectuates the views of Stone and Webster as gained by their experience. I must acknowledge that I feel far better qualified to make an appraisal today than I did in 1929. This appraisal is different from the appraisal I made at the time of the prior hearing to the extent that there are features in the present appraisal which I did not even know existed in 1929. For example, the proper method of approach to obtaining the correct answer for existing depreciation, also the precisements which are used in our routine of setting up an appraisal (T. 1456), and many other elements which do not come to my mind immediately (T. 1457).

[fol. 1379] Depreciation

I did not find the composite percent condition for the entire property. That is merely a mathematical calculation of the property which I have included in my appraisal. The per cent condition is approximately 89 per cent. The composite percentage found by Mr. Henrici was close to 77 per cent (T. 1526). I consider the approach which I have taken to the subject to be the ideal approach, and assuming that that approach were followed by two independent, equally qualified engineers, I would expect the result to be very close. On the particular type of property under consideration in this hearing, I would expect the result would be within the limit of 2 per cent. The feature of my method of approach which I think brings about this result and guarantees it against any substantial variance due to the personal element is that it is an engineering determination. By that I mean it approaches an exact science (T. 1527). The first step in my method of approach is to estimate the amount of the deferred maintenance. By that I mean things which should be repaired or replaced, as the case may be, and have not been to the limit of operating effi-
[fol. 1380] ciency. As a practical matter, if the property efficiently serves the purpose for which it was designed, it is true that there is no deferred maintenance, although you can hardly see any property in which you do not find some slight degree of deferred maintenance. It may be only deferred for a day, but it still exists the day you see it, and in the ordinary course of events, would not be generally termed deferred maintenance, but in the practical determination of existing depreciation, the man making

the inspection would see this as an item of deferred maintenance. As an illustrative example of what, in my opinion, would represent this kind of deferred maintenance in the stockyards property, it might be that a board has been ripped off of a fence, and at the time the investigator saw it, that board was still off the fence. It might be that due to financial conditions of the company they have postponed the maintenance (T. 1528) program, for example, of painting a certain building which showed signs of neglect. On this score, there are any number of such instances that might be considered in the light of deferred maintenance. If a board on a fence has become partially decayed, one element of it would be deferred maintenance, but the decayed board would not necessarily be deferred maintenance. It would depend upon the extent of the decay. If the decay has reached the limit where the board should have been replaced and had not been, that would represent deferred maintenance. I do not say that there is no room for disagreement between two experts as to whether that stage of decay has been reached. My statement was not with respect to any individual part of my approach. My statement was in reference to the final answer which is arrived at by two experts after a consideration of three elements, one of which is the deferred maintenance (T. 1529). Even [fol. 1381] though there is room for diversion in one element, that would not be likely to produce a diversion in the result because if it was omitted in the first step, or the first factor under consideration by one engineer, it would be picked up in the second step under a different classification, or if not in the second step, it would be picked up in the third classification. If the pavement has reached the point of sufficiency for being repaired or replaced, then, of course, that should be done. If it is not done, that would be deferred maintenance in the pavement. One engineer might think that the pavement had arrived at the stage where it should be replaced or repaired, and another might not (T. 1530). The second step only provides for an estimate of the replacement or repair from the point at which the first step stops. From that point the second step provides for the further replacement to a condition which is practically, in so far as the replacement is concerned, or possibly you might say without replacing the item under consideration, in its entirety. The difference is that the

first step is economically justifiable at the time; whereas, the second step considers the fact that the repair or replacement would be uneconomically justifiable, or economically unjustifiable, to more correctly put it. In other words, the second step contemplates a repair or replacement which I think is going to have to be made at some future time that is not required or even proper to make at the present time. The third step contemplates an allowance for the loss which cannot be repaired. It is equivalent to an abatement or an allowance, or as between a buyer and a seller, because of the fact that the buyer knows that because of the present condition for which this very allowance is made, it will be necessary to make repairs and replacements sooner than if the property were identically the same as exactly new [fol. 1382] (T. 1532). The sum of the three steps should produce a result which represents the present found depreciation. The third step does not include the element of obsolescence and inadequacy. It has no bearing on obsolescence and inadequacy. Those elements are taken into consideration but are not computed as elements of existing depreciation. My method of approach contains no provision for finding any depreciation based on obsolescence or inadequacy. I am merely finding the existing depreciation on the property as I see it. I do not regard obsolescence and inadequacy as factors of depreciation. It is my opinion that if two engineers are not in agreement as to the necessity of immediate repair or replacement of a part of the property, and one places that part in his first step in this approach, and the other excludes it from his first step, it means that he will necessarily place it in the second or third step (T. 1533). No matter which step it is placed in, it has the same relative weight in the final determination because it is not figured on weighted basis. It is figured in dollars and cents. If I think that the pavement should have been replaced last month, and another engineer thinks it should have been replaced last year, that does not make any difference in the amount of accrued depreciation. I applied my method of approach to the determination of the accrued depreciation of respondent's property alone. I do not mean by that that I made all the final calculations, but I made all the field notes. In the matter of exercising judgment in the determination of what the final figure should be, it was entirely my own judgment.

The simplest explanation of why it is my opinion that the factors of obsolescence and inadequacy are not elements of depreciation is that I consider them rather elements of consideration as to the used and useful feature of the prop-
[fol. 1383] erty (T. 1534). If I were to inspect a power plant, for example, and in that power plant I found a unit of equipment which was not in serviceable condition—by that I mean that it could not reasonably be put into service—I would tag that inventory. If it had been gathered in the course of the inventory as not used property, and in setting up the inventory of that property I would be attempting only to set up the used and useful property. As I understand that is the basis for all rate proceedings, I would not include that item in the inventory. As an example, a generator that is not fit for operation and is not operating because of mechanical defects, or it might be that the indication that it had been strictly abandoned, maybe having been stripped of certain of its parts for use in connection with other equipment in the plant; if it had been left idle to a point of deterioration by rust, and the elements which in my estimation would make the item unserviceable, I would judge all those elements or those of the elements which I found, and would make a determination as to whether (T. 1535) the property was useful. It may not be used and still might be useful. For example, I make reference to items of equipment which are sometimes not used, but held strictly for stand-by purposes. In case I was dealing with a small power plant that had just one generator, and my investigation made it perfectly clear that while that generator was actually being used, producing current which was being sold, nevertheless it was so small in relation to the needs of the company that it was perfectly apparent that within six months or a year it would have to be taken out and replaced with a larger generator, I would consider it used and useful. And in that connection I believe that the rate payers would be fully justified in paying the carrying charges on that item, for in reality all they c pay is the carrying charge because I would con-
[fol. 1384] sider that the management had used discretion as to the time necessary for the replacement of that item, at which time undoubtedly the rate payer would undertake a new burden. I would not at that time, in the determination of accrued depreciation, give any effect to the de-

veloped inadequacies of that generator. That would not be true if it were shown that it was uneconomical to operate that generator (T. 1536) and that the rate payer was thereby taking on a burden by what might be termed mismanagement. I would give consideration to that. That would not result in a reflection to the accrued depreciation because it would never get to the point of obtaining accrued depreciation upon it. The generator would be eliminated from the inventory. Assuming two office buildings which cost the same amount originally to construct, one of which is much older than the other, both in sound condition in so far as wear, tear, rust, rot, and decay are concerned, but one of them so much more old fashioned than the other that tenants would not populate it except at rents less than the new building, if I were appraising the old building I would not give weight to that obsolescence in my estimate of accrued depreciation. I would give consideration to the occupancy of the building, whether it was serving any purpose for which it was built, whether the income had shrunk to such a point as to further burden the rate payer, whether I considered the management had made a mistake in not replacing that building (T. 1537) in order to lighten the load for the rate payer; and after a thorough consideration of those factors, I would either throw out the building entirely or add my recommendations as to its usefulness. If I were appraising both of those buildings on the basis of cost of reproduction new less depreciation, and I found it cost exactly the same amount of money to reproduce new each of the buildings, I would in no case reflect the obsolescence [fol. 1385] in the depreciation column, but I would bring out the facts as found, and I would make those facts effective in the valuation by reflecting them in the inventory. I would not inventory one of the buildings, or I would inventory it at a lesser figure than the cost to reproduce new column on the basis of certain facts which I found to exist and with certain notations of recommendations as to its usefulness (T. 1538). I might give some weight to the present use of it. With respect to the appraisal of 1929 and the testimony of Mr. Burnell, of Stone & Webster, I am not attempting to justify anything that Mr. Burnell said. I am very frank to acknowledge that the approach which I had in 1929 was entirely different than the ap-

proach which I had in 1932. I justify that by the simple statement that I have lived three years and, I think, learned considerable in that interim. There is no practical difference, to express the answer on a percentage basis or in terms of dollars. Even in instances, the computations may be computed in terms of percentage; but the real difference is in the general approach to the engineering problem involved. As I see it, one approach is an over-all estimate or, if I may be forgiven for criticizing, even an over-all guess; whereas, the other is an approach to an engineering determination or a mathematical calculation (T. 1539). I have qualified that slightly by saying that the third step in my approach is not 100 per cent applicable to an engineering determination.

Referring to the testimony of Mr. Henrici and myself on depreciation at the prior hearing, I think the general difference between us lay in the detail of the consideration of the elements entering into the building under consideration (T. 1540). If I found that the floor joists in a building are as good as they were when they were put in, I would still consider them as being in 100 per cent condi-
[fol. 1386] tion, and if I found that the paint or a wall paper is as good as when it was put on, I would find it to be in 100 per cent condition. Finding the plaster back of the paper to be deteriorated would have no necessary effect on the wall paper at that time. In wall paper you have picked an item which is rather short lived ordinarily, and I think my third step would compensate in that particular instance for what usage had been obtained in it. If I found a wood floor that was in perfect condition and the joists on which the flooring rests in unsound condition (T. 1541) I would give the finished flooring the effect of 100 per cent condition, but not the floor as a whole. I would consider that the repair or replacement was not necessary in the floor but in the joists. The result is that the finished flooring, which is in perfect condition, gets a 100 per cent rating, even though the floor joists may need a great deal of repair and replacement, with the possible exception that if in my third step, I allowed an abatement for the future repair of that joist or many joists, if the case so be, I would take into consideration whether it would be necessary to make replacements in the finished floor on top of it. If the necessary replacement of the joists would require the probable

destruction of the finished floor, I would take that into consideration (T. 1542). If that were the fact in the case, I would take that into consideration; and if, on the other hand, it might not be the fact, if the joist could be replaced or repaired without affecting the finished flooring, then I would not give the finished flooring any allowance. If I found in a brick wall that the common brick were sound, the face brick were unsound, and I found that the face brick could be replaced without affecting the existing common brick, I would give no consideration to (T. 1543) depreciation of the common brick. If, on the other hand, I found that in repairing or replacing the face brick it was [fol. 1387] necessary to go into the matter of the common brick, I would reflect that expense in connection with the common brick. With respect to the hidden parts of the property which the eye cannot see, I handled them in the light of the experience which I have had in the past. In this particular instance I have had considerable experience with certain elements, so-called hidden; probably a little greater advantage than I would have in the ordinary case. But even in the ordinary case, I think my judgment is mature enough in the light of my past experience to reasonably estimate what would be the condition of those hidden elements. If I cannot see hidden parts, I do not necessarily assume them to be in 100 per cent condition. If the portions exposed in and around them would indicate certain features affecting the hidden part, I would so give weight. For example, a brick wall that showed a crack on the outside and the same crack in the inside, I would naturally assume that the crack ran through the entire wall (T. 1544). In many instances, I would say that any item which had been exposed to the elements or to any element and had preserved its entirety, it would be reasonable to assume that the portion which had been protected had also preserved its original condition.

With respect to the property of respondent, I would say that as a practical matter it is pretty nearly true that I did not depreciate hidden parts, although there may be instances where I would give slight consideration to the deterioration in hidden elements. I think that crystallization is one of the elements of deterioration in steel work. I would say as a practical matter, if steel work were concealed, that ordinarily the protection which it had received would not tend to cause crystallization. It would not

crystallize where it was protected (T. 1545). There are practically no instances on the stockyard property where [fol. 1388] there is concealed steel work. There is some slight amount in the Exchange Building, but outside of that and a few lintel beams scattered through various buildings, I would say there are none. In those instances I would assume that the steel was in 100 per cent condition, because I know that crystallization with the elements involved and the lapse of time would not have occurred at this time. I could not state whether in the 1932 appraisal there are any major items as to which Mr. Henrici and I are in agreement as to the amount of accrued depreciation. I have not made any specific analysis of the differences in the existing depreciation, and I would like to emphasize that in answering all the questions where the term accrued depreciation is used, I refer to the term existing depreciation. I think there is a distinction (T. 1546). Depreciation does not necessarily accrue. By accrue I mean gradually accumulate or build up. I think the term implies that age has something to do with depreciation; whereas, I would like specifically to state that age has nothing to do with depreciation as I find it. Depreciation in some cases could build up gradually and in others come suddenly. I think in some instances it does and in some instances it does not. I do not recall any item of stockyard property at the present time which might, generally speaking, permit of accrued depreciation. By that I mean just because of age that depreciation occurred. There may be some such items, but I do not recall them at present (T. 1547). I stated that I did not believe that only because of age depreciation accrues to any of the property. In some instances it may be that depreciation comes little by little, and in some instances it may not. I do not think that lapse of time in and of itself is ever an element of depreciation.

In estimating my depreciation I determined the amount [fol. 1389] in dollars and cents occasioned by each of the three steps that I have described. In some instances they were figured separately and distinctly, and in other instances the first two elements were generally computed together. In the third instance it was always computed separately. I am unable to say just how and when each step was applied or just the manner in which each item was computed without referring to very voluminous notes of very voluminous items. I could not give the amount which

arises from each of these three steps without considerable study (T. 1548).

I gave no weight to obsolescence in determining the existing depreciation of the Transit House Hotel. I gave no weight to the fact that the building is not earning the cost of upkeep. I gave no consideration to the earning power of the building because I did not consider that any item of obsolescence entered into the earning power of that building, because I was very familiar with both the earning power and the reason for lack of such.

I did not find that the element of obsolescence existed in the horse barns, which are now used as sheep feeding barns. Apparently they are not more expensive in construction than is needful for their present use, because the management saw fit in very recent years to build a barn of the same type and character, and even a higher type than the existing building, for the purpose of sheep feeding. The management replaced a barn which had been partially destroyed by fire (T. 1549) but did not restore it as it existed before. They built a larger barn than had formerly existed. A portion of the old foundation was used, and a slight portion of the old walls were used where it fitted the scheme of the new construction. The design of the new barn was changed materially.

[fol. 1390] In determining the existing depreciation of respondent's property, I gave no weight to the service condition theory, if you mean by service condition the theory with the age and life (T. 1550). The theory, that if the property is capable of rendering adequately the service for which it was intended, the property has not depreciated at all, is covered by the first step of my approach only. The other two steps go beyond that point.

I testified as a witness before the Interstate Commerce Commission in Finance Docket No. 3906, the excess income of the St. Joseph Belt Railway Company. I believe the first time I testified was in the year 1925, and I believe it was still the same proceeding when I testified in 1930. The statement, "Witness is of the opinion that the so-called service value theory of depreciation is the correct method to be adopted in determining the value of this carrier's property for a rate base," properly reflects my testimony. If I were limiting my opinion without the influence of court decisions occurring since that time, I believe I might still hang to that theory, but in the light of

the present situation, I subscribe to the theory which I have adopted now (T. 1551).

When I referred to the so-called service value theory of depreciation in that proceeding, I intended to convey the thought that as long as the property was serving the rate payer to a degree of 100 per cent efficiency that the rate payer was in no wise penalized because of depreciation, and my thought was that just rates which he should pay was on the basis of the service performed rather than on the physical value of the property. That theory applied to the stockyards would mean that if the pens were adequately holding the cattle and providing facilities for the feeding and watering of the same in the pens, there would be exist- [fol. 1391] ing depreciation in those pens only to the extent of deferred maintenance. I gave that theory weight in my determination of the existing depreciation in this proceeding in a very minor part only. It is just one portion of the existing depreciation. It enters into the deferred maintenance portion and is a step in the calculation of depreciation which I have calculated to exist (T. 1552). In Finance Docket No. 3906 I made the statement "If this method were adopted, that is, the service method that I just referred to, there would be no reason for the depreciation reserve account except as a protection against retirement due to obsolescence or inadequacy based on a fair estimate of expected life" (T. 1553). I do not subscribe to that statement unqualifiedly at the present time because of the fact that the term "depreciation reserve" has been used very loosely to my notion in this hearing. As to the qualification which should go along with that statement, in the first place, I was testifying as to a very dissimilar type of property. When I said that there would be no reason for a depreciation reserve account, what I meant was that there was no need to set up in the reserve account the item of existing depreciation, or any accrual on that item which might take place. I had no intention of expressing myself as being anything but in accord with the reserve, or, as I wish to term it, amortization of the property, regardless of what features of amortization might be found to exist in the future, or what elements need be provided for in the reserve on an amortization basis (T. 1554). I mean that this reserve amortization is a substitute for depreciation reserve. I

have always personally thought that the term "depreciation reserve" was a misnomer. I believe that the security holder of the stockyards company is entitled to protection for future requirements in respect to retirement or other features for which the amortization is provided. Relative [fol. 1392] to the approach to the problem made by Mr. Henrici, I am rather reluctant to offer criticism of somebody else's method of doing anything, but I have stated very definitely that I do not consider Mr. Henrici's approach a correct approach. I do not mean necessarily that the results obtained by Mr. Henrici could have been obtained as accurately as he obtained them by anyone other than an engineer. His method has been criticised by many writers of good reputation in public utterances on the subject. The one particular criticism which is very firmly in my mind, and which possibly might not have the weight that some others would have, was written by the vice president of Stone & Webster Engineering Corporation. However, it fairly well expresses the ideas which have been advanced on the subject by others with whom I am not so familiar and whose names do not occur to me at the present time (T. 1555). As to whether my method of approach has been subjected to criticism, I have seldom testified in a case, or known of anyone who used the same method in testimony before State commissions, public utilities, or public service commissions throughout the country, who were not always subject to some criticism by that commission. However, I have never seen in print by recognized authorities any explicit criticism of the approach (T. 1556).

[fol. 1393] Land Values

Cost of Filling Land of Respondent

My estimate of the cost of filling certain properties of respondent and certain properties adjacent to respondent's land was $1.00 per cubic yard. A part of that cost would arise from the necessity of excavating the earth which you use as a filler. If I were doing that excavation work I would prefer to use steam shovels. It would make no difference whether they were purchased or rented. The quantity involved for the estimate would undoubtedly use up the [fol. 1394] normal life of equipment of this type, and therefore it would reflect back to a rental basis. As to how many

yards a shovel would excavate a day, my computations were not made on that basis. I believe I can give you a fair answer to that question if you see fit to have me follow that line. The basis of my computation was for contract work, that is, the excavating would be done by a contractor and the hauling by another contractor (T. 1560). I estimate the excavating contractor would charge a minimum of 20 cents a yard. The average length of haul would be ¾ of a mile. The balance with the exception of the spreading cost would be the cost for haul. I actually arrived at a figure of $1.05 and $1.10 but for the sake of being on the minimum side and for the sake of using a round number, I adopted the price of one dollar. The haul and spreading would cost 80 cents. The spread would cost about 10 cents a yard. I gave consideration in a general way as to the number of trucks that would be used. However, I based my final conclusions on a contract price. I think the equipment which I had in mind would load on an average of 15 trucks per hour, and that probably a round trip for a truck would require one-half hour; therefore, the necessary trucks would be in the neighborhood of 7 or 8 to 10 (T. 1561). Those trucks would be of large capacity, the so-called four to five ton truck, which would carry approximately 2½ yards of solid earth. Spreading would consist of two operations, one would be the general spreading and the other would be the finished grading. The general spreading would probably best be handled by hand and the finished result would probably be brought about by the use of a blade. The finished result would be the general leveling of the dirt. That would not be the leveling that would prepare it for paving. I think it would require for paving additional leveling because it would be necessary to prepare it for drainage, which would [fol. 1395] not be done at that time, and it would probably be a cost applicable to the paving rather than to the grading (T. 1562). By preparing it for drainage, I mean preparing the sub-grading for a given drainage required by the finished pavement. I refer to a certain degree of differences in the level of the pavements so as to make it drain and not to the laying of sewer or drain tile. I cannot give you the total truck hours that I estimated would be required per cubic yard of fill or the total man hours. I didn't base my estimate on that. I might say that the situation which I have described for such an operation, of

course, is a set-up to take care of the maximum excavating and hauling requirements, which never in actual practice extend over the entire period of the work. In fact, the maximum is always greatly discounted by average conditions of the work. I made inquiry of the Lehr Construction Company of St. Joseph as to what they would do this work for (T. 1563). They did not make a bid. There was a general conversation in which I discussed the situation and asked for an opinion as to the contract price which would be obtainable under existing conditions without any particular threat to the present distressed conditions. The opinion was somewhat higher than $1.00 a yard. I believe that the filling of respondent's land would necessitate a greater expense per cubic yard than the filling of the St. Joseph Belt Railroad. I am referring now to the fill of the St. Joseph Belt Railway which was inventoried in the basic valuation after the fill on that property. That did not go back to the point of filling the original raw land, whereas my estimate of filling the respondent's lands goes back to the point of filling the original raw land which was, at the time of originally filling, marsh. This is not true to as great an extent of the Grain Belt Mills and the Larabee [fol. 1396] Mills land (T. 1564) although these lands are somewhat soft due to the fact that they are low lands but not nearly to the extent that the respondent's lands were before filling. I assume that respondent's Zone A and the right-of-way of the St. Joseph Belt Railroad adjoining were in quite similar conditions as raw land. There is no difference in the kind of filling for Zone A and for the Belt Railway. The difference goes to the extent of the filling. That would change the price per cubic yard because the extent of the St. Joseph Belt filling was approximately on the basis of the present existing fill on respondent's lands. I do not say that where the amount of earth to be used in the fill is relatively small the per cubic yard costs will be less. The reason is that the conditions under which that fill would have to be made were worse in the case of respondent's land than in the case of the fill which was inventoried by the St. Joseph Belt Railroad (T. 1565). I refer to the marshy conditions. I can make myself more clear probably if I say that in the estimate of the fill under Account 3 for the St. Joseph Belt Railway Company, it was assumed that the fill was only that portion over and

above the natural ground level as existing today. In other wards, where the St. Joseph Belt Railway adjoins Zone A, there was practically no fill. I believe absolutely no fill figured for the St. Joseph Belt Railway Company, whereas in respondent's lands it was figured to a considerable depth (T. 1566). In Finance Docket No. 3906 before the Interstate Commerce Commission I accepted the figure of 35.5 cents per cubic yard. It is not my opinion that the marshy condition that existed in Zone A would increase the cost from approximately 35 cents to approximately $1.00 a yard; that is just one of the elements. The two situations are entirely dissimilar. The fill for the St. Joseph Belt would not necessarily come in total from the same source [fol. 1397] from which it would be necessary to make fill under respondent's land. Many things entered into the fill on this St. Joseph Belt Railway Company, where it was very possible and probable to obtain a great deal of this fill right on the site itself. In fact, the drainage ditches adjoining the right-of-way would give great access to procure that fill. The two situations, as I see them, are in no wise comparable. If my memory serves me correctly, the fill which is inventoried in that section of the Belt Railway ranges from 2/10 to 8/10 of one foot, and I am not so sure but that some of that was cut instead of fill, but I think, in no instance did the grade reach as high as one foot (T. 1567) either for cut or fill. In other words, it is simply scratching the surface at that section of the right-of-way.

Miscellaneous Land Data

Referring to my estimate of the cost of $5.00 per foot for the railroad tracks which were built to serve Sale No. 10, I based the estimate upon the use of 85-pound rail. I do not remember definitely whether that was a new rail or relay rail, but I do remember that about that time relay rail was very high as compared with new rail. In fact I remember an instance where we bought new rail because the difference in price was not sufficient to warrant the purchase of relay. I am not prepared to say whether that is new or second-hand rail. I don't remember the price which I used. I do not have any notes on it with me. I have no notes on the Union Terminal. I believe the ties were 7 inches by 9 inches, treated ties. I do not recall the price of the ties (T. 1568). All the other track materials

which go to make up a switching track were considered in that estimate. That would include turn out materials, tie [fol. 1398] plates, rail braces, spikes, bolts, the grading cost would enter into it and the service charges would enter into it. I do not remember how much I allowed for grading costs or for surfacing costs or how many men I contemplated using in track laying, and I don't recall how much track I contemplated they would lay per day. I remember nothing of the details of the estimate. I do remember the over-all costs.

In the filling of Zones A and B, I contemplated moving the earth from King Hill (T. 1569). In the actual filling all of the earth used, as I understand it, was moved from King Hill. In the truck-in division where I used cinders the depth of fill ran somewhere from a foot to eighteen inches. I would say at the deepest point it was a maximum of two feet although I am not sure about that. We used cinders at that time because they were readily available and probably cost not to exceed what it would have cost to import the fill from other sources. I think some of the cinders came from packing plants and I believe some of them came from St. Joseph Belt Railway Company. I don't remember what that cost of fill per cubic yard was. I am pretty sure that it cost more than $1.00 but that was to be expected because it was a small job (T. 1570). I was in the service of the respondent approaching 12 years when I severed my connection. Since then I have been more or less familiar with this property, having visited it six or eight times in periods ranging from one day to one month. My period of service began about the first of 1919 and ended the latter part of 1930. During that period I was acquainted with the property, particularly the main operating portion of it on Zone A day by day. During that period I observed that there were several hard rains, rains of extraordinary volume. There were times in which flood waters caused inconvenience and even damage to respondent's property to a limited [fol. 1399] extent. I don't recall the exact occasion of a rain on June 8, 1920, when there was 2.97 inches of rain fell in an hour (T. 1571), but I think I am thoroughly familiar with all the rains that occurred during that period unless I happened to be out of town. Without remembering the exact date I remember occasions when the sewer and surface drainage in South St. Joseph was inadequate

for limited periods (T. 1572). If it were raining pretty hard I probably was more concerned with Illinois and Packers Avenues than I was with Missouri and Kansas Avenues. Missouri Avenue runs right down to Zone A but the drainage outlet from Missouri Avenue is much better than it is at Illinois or Packers Avenues for the reason that it is deflected to open drainage ditches on respondent's property at that point. Any slight damage which might have been done did not come from Missouri Avenue. I recall a considerable number of occasions when Brown's Branch overflowed in my early connection with the stockyards. If I were told that there was a rain of one inch in 22 minutes and that the newspapers recorded that Brown's Branch overflowed and Lake Road west of the railroad tracks overflowed, I would not be surprised. I have known that to be a fact. I do not remember the exact date but I remember such an instance about August 8, 1923. However, I think that is Lake Avenue rather than Lake Road (T. 1573). Lake Road is a long ways from Brown's Branch. I would not be surprised if I were told that on June 24, 1924, there was 2.36 inches of rain in 54 minutes and that the newspapers recorded that Brown's Branch was inadequate and it broke through the retaining bank and debris was washed onto Illinois Avenue and that the Justice Court in the basement of the Transit House was inundated and there was 8 inches of mud at Cheroke and Lake Avenue and bridges [fol. 1400] were washed out. I remember all those instances very well. I remember Whitehead Branch washed away. I never remember of Lake Road being flooded (T. 1574). I remember of Lake Avenue being flooded. Again on May 16, 1925, there was 1.64 inches of rain in 37 minutes and the big Brown's Branch on that occasion took care of the water without trouble (T. 1575). As to whether on June 3 there were 3.90 inches of rain in one hour and 46 minutes, and the newspapers recounted that for the second time the upper Whitehead Branch today (that was that day) did not take care of the water; the other time the trouble was caused by an obstruction at the sewer entrance; the Union Terminal line between Larabee Mills and Pioneer Sand Company, Second Street road bridge across Whitehead Creek could not be crossed, 100 feet concrete bridge across Whitehead Creek entirely disappeared, highwater at Burlington shops held up Union cars, Brown's Branch did not hold, no kill-

ing at packing plants, the subway at the stockyards was almost filled with water, between Larabee Mills and the packing plants, 12 acres were inundated like a vast lake, and the break was caused by flooding of Whitehead Creek, and, on that same day, the water blocked in Contrary Creek and three-fourths of it flowed back into South St. Joseph and flooded it, and again the Justice Court in the Transit House was flooded with 8 feet of water; cattle and hogs in the lower pens in the stockyards, were moved to higher pens; the paper said that last night (this was the paper of June 3) pens were 4 feet under water, scales were under water late today, (that was June 3, 1925), and the paper also announces that the City Engineer, after survey, states improvements will have to be made in sewers on the south side, I am acquainted with practically all of those facts but I recognize some exaggeration however (T. 1576). There [fol. 1401] was some water stood in front of the Exchange Building on Illinois Avenue at that time for a very limited period. You realize that the reason for the water standing at all was the fact the sewers were overtaxed momentarily to take it off, and the fact that the sewers backed up is what caused the water to stand. The water was not from the water itself, but simply from the inability of the sewer to take the water fast enough. I would say the maximum amount of water in front of the Exchange Building at that time, not regarding the depth in the gutters which are very pronounced in that vicinity, but considering the ground and the roadway, I would say that probably the maximum was 4 inches. In regard to the moving of livestock to higher pens, that was in anticipation of a realization which never came. It was not because the pens were flooded and the stock was forced to higher pens. I don't recall the 12 acres which were inundated (T. 1577). I recall the incidence of the June flood in 1928 (T. 1578). I recall generally the heavy rains that occurred during the period between 1919 and 1930 (T. 1579). There was a periodical flooding of lands in the vicinity of respondent's land but that is not true with respect to respondent's lands. I know of no instance of flood water running on respondent's land. I have stated of the instance or instances, in some cases, I guess possibly two or three instances, in which this sewer capacity on Illinois Avenue was insufficient for a very limited time, and the water on it found its way through the manholes to

the surface, and, so to speak, Illinois Avenue held water for sometime. Illinois Avenue, as such, is respondent's land, but when I spoke of the respondent's land, I thought in the terms of the respondent's operating lands with reference to their pen areas and building areas. The damage to a street [fol. 1402] that instance is negligible except in regard to cleaning up the mud which is deposited on such occasions (T. 1580).

The union wage scale that I used in my appraisal was effective as of August 1, 1932. I wouldn't say it became effective on that date. I don't know whether it had become effective previously or as of that date. When I stated that Whitehead Creek constituted no threat to the stockyards property and that was because of the topography of the land in between, I was speaking of all of respondent's property. The question may have been directed to Zones A and B, but if it had been directed to all of the property my answer would have been the same. The dikes which I spoke of as having been built by farmers were built, I would say, sometime between 1920 and 1925 (T. 1581). Referring to the 4-foot sewer leading from Second Street, the thought I intended to convey was that at the time of construction of that sewer, in return for the easement which the Stock Yards Company granted to the city, the city regranted back to the stockyards permission to tap that sewer at will, and at time of construction, I, personally, made connections to that sewer at several points to lines of drain tile which we laid in the southeastern portion of Zone N. Referring to the one thousand feet of spur track in connection with Sale No. 10, I stated that the approximate cost of that track laying averaged $5 per lineal foot. I imagine there was a so-called completion report made on that project. That would be in the files of the Union Terminal if a completion report were made (T. 1582), and it should show the exact cost. It should show all the materials and the amount of labor expended. However, the connection with the main line may be buried in some other job. As I recall now, that track and the track to the St. Joseph public elevator were laid about the same time and came off of the same main [fol. 1403] spur. The various fills which I spoke of including the Grain Belt tract, the Larabee tract, and those gasoline stations in Zone N on Lake Road, I estimated at $1.00 per cubic yard. In arriving at that $1.00 per cubic yard

estimate, in order to save the work of many computations of different bases, I tried to fix an average price which would apply to all the zones under consideration and all the sales tracts under consideration.

I am familiar with all the stockyards in the country to some extent. I believe I have visited practically all of the major stockyards and some of the minor one- (T. 1583) but even those which I have not visited I am acquainted with their lay-out through exchange of maps and contacts with representatives of those yards. I would like to change my statement in regard to the entire United States and make it include Canada too. I am familiar with yards in Canada to some extent. I am not familiar with the stockyards that have recently been erected in Philadelphia. I don't consider the Philadelphia yards comparable yards to St. Joseph. That is on account of size principally. I had in mind in what I said principally the major stockyards of the country, although I had some knowledge of the minor ones but not in detail on all of them by any means. I should think that the commission men should have a knowledge of the operating conditions of the yard (T. 1584). If some of the commission men at St. Joseph had testified and their counsel contended that they should have higher rates on account of the peculiar difficulty of this yard from an operating standpoint that would not change my opinion because behind there I know there may be many peculiar difficulties for commission men which would have no bearing on the layout of the stockyards. This would be principally rules and regulations laid down by the Stock Yards Company [fols. 1404 & 1405] in respect to commission men's operations. They make many rules which the commission men would consider difficult or a hardship, so to speak, but I think the Stock Yards Company tries to be fair in all instances in their dealings. Knowing the disposition of the Stock Yards Company, and also being quite familiar with the disposition of the commission men in general, I would not be surprised if the commission men would complain. I don't know anything about the commission men's case at St. Joseph (T. 1585) and I do not know that the management of the Kansas City stockyards contended that it was the most conveniently laid out yard in the country but I would admire him for that position.

Redirect Examination:

[fol. 1406] Depreciation

In Respondent's Exhibit No. 112 I was not attempting to fix the value of the property of respondent in 1927. What I was attempting to do was to find what the present property would have been worth using as a basis the cost existing in 1927. That would include the present existing depreciation in that property. It would only differ from my present appraisal in that the prices used would be for the year 1927 or any of the other periods shown on Respondent's Exhibit No. 112 (T. 1590).

On page 1526 of the transcript I stated the composite condition per cent of respondent's property was 89 per cent which resulted from a calculation wherein I divided the total shown at the bottom of page 5 of Respondent's Exhibit No. 111 in the column headed "New" into the total on the same page in the column headed "New, Less Depreciation." The condition per cent in respect to the portion of the property which I have described as "Total, Material and Labor" would be 87 per cent. The depreciated figure for "Miscellaneous Structural Costs" was not arrived at in that manner but the result would be the same if that 87 per cent were applied to the new figure for Miscellaneous Structural Costs (T. 1591). My idea is that obsolescence and inadequacy should be reflected in the cost of reproduction new, where found to exist. If I had an item which was to some extent obsolete in that a like article was not being manufactured at the present time, I would obtain a quotation from the manufacturer of similar items at the present time, and items of modern design, based on his best judgment of what the item under consideration would be worth, were it manufactured at the present time. Ordinarily I believe the price would be lower than an article now being manufactured of perhaps a later design. As-
[fol. 1407] suming I had a $2000 article, which is being manufactured to-day in some improved design and which cost $2000, and assuming I was valuing an article of an earlier design which is no longer manufactured but which, if actually manufactured today, would also cost $2000, and assuming further that the value of the latter article now at the present time would only bring $1000 because of the

older design, my cost of reproduction new of that particular article would be $1000 (T. 1592).

If I were determining the cost less depreciation of this article which I have stated I valued at $1,000, I would make the same computations referred to on my direct examination, consisting of three steps, and would be bound to arrive at the same results. Assuming after I make those computations, I find that $100 to be the engineer's estimate which would cover the extent of the depreciation, the cost of reproduction less depreciation on that article would be $1,000 less $100 or $900.00 (T. 1593). If I were to recognize the feature of obsolescence as an element of depreciation, my computation of the same item would be reproduction new $2,000, depreciation $1,000 plus $100, which subtracted from $2,000 would result in cost less depreciation of $900, or the same as in the other cases (T. 1594). In arriving at the $1,000 depreciation I would determine that in the same manner I used in fixing the cost of reproduction new of that article under the first method of calculation. There would be no reason for changing the basis in arriving at the amount of obsolescence. I believe going to the manufacturer of both these articles to get the relative value of the older design as compared to the newer design would be the best source of information. As a general proposition I would take care of obsolescence to the extent it existed, and also inadequacy in the cost of reproduction new. Had the occasion arisen where such a method would [fol. 1408] have been required, I would have followed it, but no occasion arose. I had that matter in mind and gave it the full consideration it merited in the light of respondent's property (T. 1595).

In any of my computations as to the cost of reproduction new and less depreciation I made no computations as to the proper deduction for depreciation reserve. I gave that subject no consideration or investigation, as I was not concerned with it in this instance. I would have no incentive in going into that matter, because I have no thought that they have any connection whatsoever. On page 1534 of the transcript I testified: "Q. For instance, if you think that the pavement should have been replaced last month and the other engineer thinks it should be replaced next year, that does not make any difference in the amount of accrued depreciation. A. No." That did not fully express my thoughts at that time. I believe I misun-

derstood the question to some extent. I think I had in mind that Mr. Bohannan's question was putting it rather than to next year to the next day, a very limited interim of time. As a practical matter, if that had been the intent of the question, my answer would have been the same as it was. However, the very basis upon which I arrived at depreciation would, in its third step of approach, give consideration to the additional one-year life which the pavement had to live, and my answer would be slightly different in the two instances (T. 1596). When Mr. Bohannan used the word "accrued depreciation" I understood him as meaning existing depreciation.

When I used the phrase "lapse of time in and of itself" in my cross-examination, I did not mean that I did not give effect to things which ordinarily accompany lapse of time. I gave no effect to anything except merely lapse of time in [fol. 1409] and of itself. I did not mean that I excluded from consideration the things which ordinarily accompany lapse of time, and which may or may not affect the condition of the item of property I am observing. I gave consideration to the property as I found it, which may have been affected by certain items which were in effect during that lapse of time. What I intended to convey was that the age of the property had no effect on my computation. I might find one property ten years old in better condition than a similar property five years old. To that extent, the lapse of time has no effect on my calculation, but any element, and I assume that you mean such elements as rain storms, air, and other natural elements, which naturally occur during that lapse of time—any effect which those elements might have had on the property were given full consideration; because I viewed the property as was (T. 1597). In taking a particular item of property, I did not determine the date that item was installed or built, compute its existing life, and make a mathematical calculation as to the amount of that life which had expired, and reflect that directly in my depreciation computation. I considered that theory long ago obsolete and in the discard. I agree substantially with the statement made by Mr. Henrici as to the effect which I gave to age of a specific article. I believe Mr. Henrici meant the same thing when he said that only in so far as age has affected the property, by which I understand he means the elements occurring during that age have affected the property.

It was not part of my appraisal to determine the earning power of each item of property such as the Transit House. I do not see where that would have any effect on the value of the property. I made no such determination in connection with the cost of reproduction new less depreciation (T. 1598). If I made such a determination, I would have [fol. 1410] something entirely different from cost of reproduction less depreciation. I don't know what it would be. Capitalizing the earnings is the only way I know that earning power could be used (T. 1599).

I was interrogated about the so-called service value theory of determining depreciation. In that connection I said it constituted only the determination of the amount of deferred maintenance which existed in the property. That is the first and minor step in the method which I followed in this proceeding. I made two other calculations, both of which produced greater results than the first in all instances.

In respect to the statement I made as to my method being criticized by some of the Commissions before which I appeared, my intent was to convey the thought that on cross-examination many times opposing counsel apparently did not agree with my contention, and in that light I considered it as criticism (T. 1600).

Threat of Floods

After hearing all the matters which counsel for the Government read to me and about which I was interrogated on the subject of high water, it is not my desire to change my direct testimony in any substantial effect in respect to the threat of floods as applied to the property of the St. Joseph Stock Yards Company. As to the particular rain on June 3, 1925, where counsel for the Government stated 3.9 inches of water fell in 46 minutes, I of course don't know the accuracy of that particular statement as to inches and minutes, but I do not doubt that they are approximately correct. I know a lot of rain fell at that time. That water, in whatever amount it was, passed off of respondent's lands pretty quick. That did not affect the operations of [fols. 1411-1415] respondent's stockyards in any material way. Since being interrogated along that line I have seen fit to look up the records of operations on that date (T. 1601). I find that the business of the company was han-

dled in a normal manner on that day; that the receipts were so-to-speak normal; I found, for example, that on that day 5,512 hogs which were included in 283 scale drafts were weighed, and the general business finished in the early afternoon, approximately the same time it was finished the day before or the day after, or any other normal operating day. I also found that in the cattle division there were 345 drafts weighed, approximately 2,000 head, and that that business was handled in a normal, orderly manner, and completed at a normal time of day, the early afternoon.

Four inches of rain in approximately 45 minutes is generally termed a cloudburst. I know of few localities, if any, in the United States where sewers are designed to take care of very intermittent, extreme conditions such as this was, and it is not uncommon at all that sewers are temporarily overtaxed under these extreme conditions. That frequently happens in the best business and residential sections. I saw it happen in Boston recently (T. 1602). I think any trace of the water, with the exception of possibly some mud deposit on Illinois Avenue, was entirely gone in a period of a few hours.

[fol. 1416] Cost of Reproduction Less Depreciation

Obsolescence

Referring to my testimony where I have spoken of the value of respondent's structural property and equipment, I used that word as meaning cost, either cost of reproduction new or cost of reproduction new less depreciation. I seriously regret the use of the word "value," because, [fol. 1417] ordinarily, our organization is strictly opposed to the use of that word, where I obviously meant figures, appearing in the appraisal either as cost to reproduce new or cost to reproduce new less depreciation. I stated on redirect examination that my cost of reproduction new of this particular property does not reflect either obsolescence or inadequacy because I found neither in this particular property (T. 1615). Assuming that I found a piece of equipment which would cost $2,000 to reproduce new, that is, to obtain the identical thing because that identical thing is not made any more and would be a special job and that I could get the modern equivalent of it for $1,000, as to whether my cost of reproduction new would be $1,000 it

is very hard for me to answer that question for this reason: Seldom, if ever, have I been able to recognize a condition where I would be required to estimate partial obsolescence. If, in any instance, that were recognized, it would be fully explained, the method by which it was handled in the descriptive notes appearing before the appraisal. What I meant to say was that if this occasion did arise, in no case would that obsolescence or partial obsolescence be reflected in the column headed "Cost of Reproducing New Less Depreciation," if it were found in total. In other words, if the item were found to be obsolete, it would immediately be reflected by its absence in the appraisal itself. In other words, the cost of reproducing (T. 1616) new column would not reflect it because it would not be there. If I could recognize the feature of a partial obsolescence, I would reflect it after a full determination of facts and the best information available in that column "Cost to Reproduce New Less Depreciation," but it would be explained in the preceding notes to the appraisal. If I found radiators in a building which were of a rather old type and when I tried to get prices on that type of radiator I found they were no [fol. 1418] longer manufactured and if acquired now would have to be a special job at a special and extra cost, I would not put that special and extra cost in my appraisal. I would use the cost of a modern radiator even though that cost would be less than what it would be to reproduce the old radiator, assuming of course that the leeway which would be taken in that instance from the basic low of reproducing exactly what you find would be the practical equivalent of the item which you were reproducing. I think that all engineers are bound to demand some leeway in that respect, even though possibly the courts have said, in substance, that you must reproduce the property. If you find, however, when it becomes impossible to do that, necessarily the engineer must demand some leeway, and that seems to be the reasonable and the practical way out of it. That is the only sensible thing to do (T. 1618). Assuming that I find in a property which I am called upon to appraise for rate making purposes that the design and layout of the entire property is in my opinion antiquated, has suffered a great deal of obsolescence, and that I could lay out a different property serving the same purpose even better and cost less to construct, my assignment would be

to appraise that property and not to appraise some different property, and that is the property I would appraise. If I found the property was obsolete, I would go to the management and say that I found no useful property to appraise (T. 1620). There would be no property to appraise. I would inventory nothing if it were all obsolete. I don't understand the term "suffering obsolescence" unless you mean the theory of a property becoming obsolete just because of age. Of course, in that respect if anything gets older, according to your terms it develops obsolescence. In other words, it is a lessening of modernity, so to speak, [fol. 1419] but that to my notion is not obsolescence. My idea of obsolescence goes hand in hand with usefulness, since an item is either obsolete or it is not obsolete. If it is obsolete, it has no place in the appraisal of property for rate making purposes. If it is not obsolete it has its function and its place in the operation of the yard, and the rate payer should be called upon to carry the burden of that item. That strictly is my idea of *obsolescence, of a so*-called use of the item of obsolescence when found. There may be individual cases, few and far between, in which the element is found to exist in any entirety, not in its entirety, but what might be termed partial. They are so few and far between that in my experience of appraisal work I have yet to discover one. I must acknowledge that I am not enough of a student of Webster to draw a line between the words "obsolescence" and "obsolete" (T. 1622).

Land Values

Cost of Filling Zone A

CHESTER S. CHURCHILL, a witness called by the respondent, after first being duly sworn, testified in substance as follows:

I live in Chicago and am assistant to the General Superintendent of Swift and Company's plants. I am an engineer by profession, graduating from Brown University, receiving the degree of Civil Engineer in 1896. I was civil engineer employed in the construction of the St. Joseph Stock

Yards from about the beginning and carried through the early part of that construction (T. 1627). The construction was really a joint responsibility between the Superintendent, L. R. Sack, and myself. I was the only civil engineer who had anything to do with the construction of the [fol. 1420] yards. I first came to St. Joseph about August 1, 1897, at that time being in the employ of Swift and Company, and worked in the capacity of civil engineer in laying out the plant and other engineering matters until the present plant of Swift and Company was completed the following spring (T. 1628). Some time in the early part of April, 1898, I went to work for the St. Joseph Stock Yards Company, retaining the position of civil engineer in charge of construction until about July 1, 1900, when I left St. Joseph. A substantial amount of the construction had been completed at that time and they were operating a stockyards in the portion which had been constructed. I have seen the present stockyards since 1900 and I find additional construction that was not there when I left in July of that year (T. 1629). When construction began in 1898 there was a rather small old stockyards in the location of the present sheep pens and occupied some space a little further north and west. When I began work, they had started to do a little filling upon what would be the north end of the present cattle pens and adjoining the old stockyards. No structural work had been begun (T. 1630). I began with the construction of pens approximately at the extension of Missouri Avenue and constructed sheep pens south to somewhere near a point which would be drawn by extending a line from what is known as the hay barns due east. Those were approximately square in area. These particular pens were the last that were built. The cattle pens which were the first construction extended from the sheep pens south to within two double blocks of the Exchange Building. They extended in width from the loading and unloading docks to and including the double alley which runs north and south and which extends approximately from the westerly boundary of the Exchange Building area (T. 1632-3). During [fol. 1421] that time also the two hay barns were built. On the south side of Illinois Avenue the present hog house was constructed from Illinois Avenue down to the present southerly limits of the hog house (T. 1634). In width it was just a little wider than the cattle division to which I pre-

viously referred. The hog division extended to the alley which is almost an extension of the double alley in the cattle division. The additional pens shown west of that single alley in the hog division were constructed at some other time. That is likewise true of the pens on the north side of Illinois Avenue and to the west of the double alley, except that the fill in the area lying between the Exchange Building and the cattle division on which the construction had been finished was put in at that time (T. 1635).

I have placed yellow lines on Government Exhibit No. 103 which approximately incloses the portion of the property I constructed in the years 1898, 1899 and 1900. I have examined the map sufficiently to know the approximate location of what have been referred to as land zones A and B. When I first saw that land and prior to the construction of the stockyards I would call it typical Missouri River bottom land. It was low in some places. I would not exactly call it swampy, but it had that appearance in the spring of the year when it was wet. It was subject to overflow of a large creek down in the south end, and there was a drainage ditch that ran through it for some reason from the south end of the property and connected indirectly to the river. It was necessary to fill this land before we began construction. Most of the fill was clay that came from a location east of the stockyards, called King Hill. I was personally in charge of the filling of this land. As I remember it we paid for the clay by the wagon load, it being carried in old-style hauling wagons that had a body carrying roughly a cubic yard to a load, and my remem- [fol. 1422] brance is that we paid a dollar a yard delivered. The driver did not personally have to dig it up on King Hill at that time. They used horse-drawn railroad scoops and had some men up there and these men dug the clay, and the drivers hauling it had some kind of an arrangement with them so that they loaded the wagons with these scoops through an opening overhead (T. 1638). This price of a dollar included the excavating and loading of the wagons, and unloading at destination where they simply dumped it. The floors of all these wagons were removable two by fours which were simply turned edgewise and the dirt filtered down. Afterwards at the time the pavement was laid, it had to be graded. I would say that the minimum fill under the brick was around two feet. For a con-

siderable part of the area I would say the maximum was around three feet. At some points, I could not say that the area would be so very large, some low points that we graded on that ground, it might have reached over five feet. I don't know as I should mention the dock, but the dock was filled similar to the pen areas, but of course it took more fill because the level of the dock is something over three feet above the pen level. That was all done at the same time, the fill being placed between the retailing walls and the loading dock. I had nothing to do with the construction of the Exchange Building. That was done by an architectural firm in St. Joseph. Eckels was one of the partners. Just that portion of the stockyards on which this construction was placed and the area directly back of the Exchange Building was filled at that time. Of course, on the outside of those areas we would have an embankment there to protect the fill, and that would have carried it out for a few feet from the line of the construction (T. 1640). In addition to the clay we used quite a little ballast, clay ballast as fill when we came to construct the sheep [fol. 1423] pens. We burned that ourselves down at the southwest corner of the stockyards property. It was burned for brick ballast and it was not all used for this purpose and whatever was left over was used in place of some clay in the sheep pens. As I remember it, it was quite a considerable yardage. Practically all of it was in the neighborhood of the sheep pens. I have forgotten what it cost, but as I remember it, it was more expensive than the clay because it had to be burned with coal. We only used it because we had some surplus left over. On top of the clay we placed cinders before paving (T. 1641). There was a six-inch layer of cinders on top of the clay, and in some instances there was more than six inches to level it up. There might have been as much as a foot of cinders in some cases. I do not have any recollection about the cost of the cinders. Most of our cinders come in in cars, but I did not have anything to do with it. I forget just how they were bought. We had a purchase shop down there and I had nothing to do with paying for the cinders.

The basis for determining the level of the stockyards and also Swift and Company's plant was the high-water level of the Missouri River some time in 1881. It is my remembrance that the basement floor levels of the Swift plant and

the alley level of the Stockyards were lined up to be something over a foot above this high-water level. That was the highest they had ever had up to that time. I found the land in Zone A upon which we were going to construct a stockyards to be a lower level than that particular high water level (T. 1642). That was the reason we had to fill it. They did not want another highwater from the Missouri River getting into the basement floor of the plant, and they filled the yards.

Since arriving in St. Joseph several days ago I have gone down to the stockyards (T. 1643). There has been [fol. 1424] considerable area filled in and built on since I was here in 1900. I would say, although I did not examine the whole area, that the part adjoining the old construction has been brought up to the same level. Since arriving in St. Joseph I have had put down some "test holes." Mr. Black, superintendent, had some of his yardmen put down some holes with a tool they call a post digger, down until we went through the filling, and reached the original gumbo surface (T. 1644). Prior to being filled the land was what is commonly called gumbo. It is a kind of bluish black. It is distinctive in appearance as compared to clay which is yellow. It is also distinctive in appearance as compared to burned ballast which is red (T. 1645). The following is a description of the test holes which were dug: The first one, the northernmost hole, is in the sheep sheds, about 200 feet in from the south side of the sheep sheds and 200 feet west from the edge of the loading dock. The second one is just south of the sheep sheds and the cattle pens where we first started construction. It is right on a line with the north line of the north hay barn, and about 200 feet in from the edge of the loading dock. The third test hole is in the double alley that has been referred to, and about midway between Illinois Street and the north line of hay barns. The fourth test hole is a little northeast of the Exchange Building and just west of the chute house at that point (T. 1646). The fifth test hole is in the hog shed. It is about 100 feet north of the south line of Illinois Avenue and about 100 feet in from the edge of the loading dock. Test hole No. 6 is located in the south end of the hog sheds about 100 feet in from the south side and 100 feet west from the edge of the loading dock. These six test holes were all on land where the original construction was made.

The two test holes that were not on land which was filled [fol. 1425] at that time, but which are west of that land, were both dug in Zone A. The south hole, or test hole No. 7, is about 150 feet north of the north line of Illinois Avenue and about 150 feet east of the east line of Packers Avenue (T. 1647). The other one, or test hole No. 8 is also in the west side of Zone A. It is about 250 feet east of the east line of Packers Avenue, and about 500 feet south of the south hay barn. I have marked on Respondent's Exhibit No. 115 the location of each of these eight test holes with a small circle, and also the number of the test hole by which I have described them in my testimony (T. 1648). I have also marked them in the same manner on Respondent's Exhibit No. 114.

The following is the result of my inspection of these test holes. Test hole No. 1, starting with the bottom of the hole and coming up to the top, there was 6 inches of ballast, that is, that burnt clay ballast, 24 inches of clay, 4 inches of cinders, 2 inches of sand to the under side of the brick, total of 36 inches or three feet under the brick, and the brick was on edge 4 inches deep; figuring that .3 of a foot, from the original ground to the top of the brick was 3.3 feet (T. 1649). There was quite a line of demarcation between the burnt clay ballast and the black gumbo. In test hole No. 2 there was 11 inches of burnt clay ballast, 15 inches of clay, and at that point there was no sand. It seemed to have filtered down in the cinders. And brick on edge 4 inches, making a total from the bottom of the hole to the top of the brick of 2½ feet. The line of demarcation between the burnt clay ballast and the underlying black gumbo was likewise easily discernible.

In test hole No. 3 there was 55 inches of clay and 14 inches of cinders (T. 1650). There was no appreciable sand there but that was in the double alley and there was [fol. 1426] a double layer of brick, one flat-ways and one edgeways, making a total brick thickness of 6½ inches, so from the bottom of that hole to the top of the brick was 6.3 feet. It was easy to discern the difference between the clay at the bottom of the hole and the underlying black gumbo. We had to make a larger opening in order to get down to make the measurement, due to the depth of the fill. In test hole No. 4 the line of demarcation between the cinders and the clay was not exactly level. It was

slanting. The total depth of clay and cinders was 39 inches. No appreciable sand, and the clay itself ran from 19 to 24 inches, the balance cinders, and the brick was flat-ways in that particular alley, figuring .2 of a foot, so the (T. 1651) total distance from the bottom of the original ground to the top of the brick was 3½ feet. The clay was at the bottom of the hole and immediately on top of the black gumbo. The line of demarcation was clear.

In test hole No. 5 there were 24 inches of clay, 4 inches of cinders, and 2 inches of sand, making a total of 30 inches, and brick on edge was .3 of a foot there, and that made a total distance from the bottom of the hole to the top of the brick of 2.8 feet (T. 1652). The line of demarcation between the clay and the black gumbo was easy to ascertain. In test hole No. 6 there were 20 inches of clay, 5 inches of cinders, and brick on edge 4 inches, making a total height from the bottom of the original ground to the top of the brick of 2.4 feet. The line of demarcation between the clay and the black gumbo was easy to ascertain (T. 1652). In test hole No. 7 there was 12 inches of clay, 10½ inches of cinders, and 2 inches of sand, making a total of 24 inches, or two feet of the fill and brick on edge, making a total distance from the top of the brick to the original ground 2.3 feet. The line of demarcation between the black gumbo and the clay was easy to discern.

[fol. 1427] In test hole No. 8 there was 39 inches of clay, 9 inches of cinder and 1 inch of sand, making a total depth of 49 inches, plus 4 inches of brick, making a total distance from the top of the brick to the original ground of 4.4 feet. The line of demarcation between the clay and the black gumbo was easy to discern. Four of those test holes were dug Monday afternoon and the other four yesterday afternoon. Mr. Black and Mr. Sack were with me when we inspected the first four holes and Mr. Black was with me in inspecting the last four (T. 1653).

Since arriving in St. Joseph I have examined the original copy from which Respondent's Exhibit No. 113 was made. I heard the testimony of Mr. Leslie as to how he prepared Respondent's Exhibit No. 115 from Respondent's Exhibit No. 113. I have also had occasion to examine Respondent's Exhibit No. 114, and heard Mr. Leslie's testimony about that map. Based upon my examination of these three maps, my recollection of the condition of the land before

I began construction in 1898 and my investigation by means of test holes, it is my opinion that Respondent's Exhibit Nos. 113 and 115 correctly state the elevation of the land of the Stock Yards Company shown thereon prior to the filling of that land by me (T. 1654). I base that opinion on three or four different facts; first, the elevations shown on Respondent's Exhibit Nos. 113 and 115 at the south end, I mean the last elevation shown at the south end on those two maps practically agree with the present-day elevation shown on Mr. Leslie's map, which is Respondent's Exhibit No. 114. I was down there and looked at the ground. It is the original ground except that in a few places a little fill from some open hog pens has washed down there in spots, but it is practically the original surface, so that at that point, anyway, Mr. Leslie's elevations practically agree with the elevations on Respondent's Exhibit Nos. 113 and [fol. 1428] 115. Then Mr. Leslie mentioned this track elevation being approximately the same on his recent survey as shown on Respondent's Exhibit No. 113. Now, third, of course, these test holes that were put down, it is difficult to identify them exactly with the location of the points at which levels were taken, in preparing Respondent's Exhibit Nos. 113 and 114, but working the thing out as nearly as we can, taking any one of these holes, test holes, and adding the distance that we found from the top of the brick to the original ground, adding that distance to the levels shown on Respondent's Exhibit No. 113 brings out a result that is reasonably close to the present-day elevations developed by Mr. Leslie on Respondent's Exhibit No. 114 (T. 1655). My own recollection as to the approximate amount of filling that was placed in there would be of assistance in forming the opinion I have stated. That recollection conforms substantially to the facts as shown by comparison of Respondent's Exhibit Nos. 115 and 114. Respondent's Exhibit Nos. 113 and 115 indicate a series of rather low spots extending almost due north and south and just west of the westerly side of the Exchange building. That had evidently been dug for a ditch at some time to take the surface water out of this area. It was in existence when I came here in 1897, and as I remember it, our construction went about to that ditch and it was left as it was (T. 1656). It was still in existence when I left in 1900.

Cross-examination:

When I spoke on cross-examination of the beginning of the new construction of the St. Joseph Stockyards in 1897 to 1900, it would have been better to have said the construction of the new stockyards, I imagine. There was an old stockyard at the northerly end of this land in Zone A. I [fol. 1429] do not know how long it had been operating there when we started the construction of the new stockyard, except that it had been built a number of years. It was an old stockyard at that time (T. 1657). My remembrance is that it covered a little more than the area now covered by the sheep barn especially to the west and a little north. Up to that time I do not remember whether it was called the St. Joseph Stockyard or the St. Joseph Stockyard and Terminal Company. It was one of those two. There were three small packing plants in existence at that time. They were not the plants that are now operating adjacent to the stockyard. Part of two of the plants are still standing, but they are not operated as killing plants any more. Just north of Swift's plant there was an old plant that is now used for certain manufacturing purposes. The original buildings were formerly part of a packing house called the Moran Packing Plant, and those old buildings are still in existence, and our company killed hogs in those buildings at that plant (T. 1658) while we were erecting a new plant, and the one adjoining to the north, the old Viles and Robbins plant was torn down a number of years ago. I don't remember just when, and the plant to the north was, as I remember it, called the St. Joseph Dressed Beef plant, and part of those old buildings are still standing and used in the way of storage and I think ice making, and so forth. I think the part used for storage and ice-making is now operating in connection with the terminal storage warehouse, but I am not positive about that. It is not Swift and Company. The construction of the Swift plant and the old Morris plant were started about the same time in the late summer of 1897, and they were pretty well along by the following spring when the actual work began on the stockyards (T. 1659). I would say that [fol. 1430] with the two packing plants coming there that the old yards would have been entirely inadequate to handle the amount of stock that would probably come in. I would say that the Exchange Building was completed be-

fore the last of the pens were completed, that is before 1900. The sheep barn was constructed before I left in 1900. It was, as I remember it, almost the last pen construction that we finished. The entire strip of structures, we might say, beginning two blocks north of the Exchange Building, and running to the north end of the present sheep barn, was constructed before I left in 1900 (T. 1660) and in addition to that the hay barns which lie on each side of the St. Joseph Belt Railroad track. The Transit House was constructed later than 1900 according to my remembrance. I am not familiar with when the row of brick horse barns, which are back of the Transit House, were constructed (T. 1661). The structures north of the Exchange Building and including the two hay barns which we have discussed are the same in design of construction as the structures I erected back in 1898 to 1900. I did not look them over yesterday and the day before. I would not undertake to say but what new boards were put in, but there has been no radical change that I could see.

My statement that the clay used in filling the land in Zone A cost, delivered on the job, one dollar per cubic yard, is entirely from my recollection. I have no records, and know of no records unless the Stock Yards Company would have some old records, tally sheets, that they used to keep on each driver, but whether they would be kept over this number of years, I do not know (T. 1662). The paving in the area that I have discussed was built under my supervision. It was placed there at that time. I do not have any recollection of the approximate total cost of the paving or other structures that were erected in the strip under my supervision. It may seem a little odd that I should [fol. 1431] not have those figures. I had a record of them, but I think, if I may be allowed to say this, in those days, why, the general plan was agreed on and we went ahead and did it, and that was why I never got up any prices that I remember of showing the cost of the paving or the cost of the cattle yards or the sheep sheds or the hog pens, I mean, finished figures (T. 1663). I do not know what the total cost was at that time. I was not responsible for the cost of it in any way. Mr. Sack and I had the general responsibility of getting the yards built. We agreed to go ahead and put the fill in, and whether there were some preliminary arrangements made, I do not know (T. 1663), and

I have no recollection of any cost except the cost of the fill. I was not responsible for that. I would say that the company had to pay what it had to pay to put it in. From my standpoint the fill was not different from the structures. Our concern was getting it in and getting the fill made. I never knew what was paid for this land that was filled before the filling was done, and I do not know whether the land was bought about the time we filled it or before that. I never did know (T. 1664). The only thing I knew about it was the cost of our cubic yard of fill. The dock that I referred to our filling was the loading and unloading dock which lies within the strip described and marked on Government Exhibit No. 103. There was a retaining wall on each side of it. I stated the ground in Zone A before I filled it was approximately the same nature of ground as I now find in the south end of Zone B. I think the general level of quite a large part of that area in land Zone A was quite a little lower than the ground to the south. I don't recollect just what it was, but something like a foot perhaps lower. What I refer to would be in a small, relatively small area, but five feet or over in some places,—there was a con-[fol. 1432] siderable area to my recollection that was three feet and over (T. 1665).

The only thing that was done by contract, as I remember, was the brick paving. Piping and sewer, as I remember it, the Stock Yards Company bought the raw materials and we had a regular construction crew in the stockyards that put in the water pipes and the sewers just as well as the superstructures and fences. I do not remember at that time whether the employees were on a day basis or a monthly basis, but they were regular employees. I do not remember what their pay was. It was not on any union scale. There was no union labor at all. I could not say whether the contractor used any union labor in laying the brick pavement. My recollection is that he did not (T. 1666). Referring to the cinders that I spoke of, they were used both as a cushion for the brick paving, and also for filling. I think in all cases that sand cushion was used, but any cinders would vary a whole lot in coarseness. For instance, if the surface was a little coarse that sand after a while would filter down through and lose itself. I would not say that the modern process of filling by pumping the sand or silt at the bottom of the river by hydraulic pres-

sure had been developed at the time the land in Zone A was filled in 1898 to 1900. I don't remember of hearing of it at that time, but I am not sure but that it had been used. Of course, I know that dredging operations were in effect doing that which is a similar situation (T. 1667). I presume it might have been practicable to fill the land in Zone A as it was filled in 1898 by pumping silt from the Missouri River, or whatever material there is. I have not made any study whereby I could estimate the cost of that.

[fol. 1433] Redirect examination:

I would not recommend silt. If there was a sand bar that could be utilized I would say that river sand would make a good fill, but just ordinary fine river mud, I do not know. That would entail an investigation as to the relative merits of the material in the river and the expense as compared to hauling clay from King Hill (T. 1668). At the present time I have made no such investigation whatever. I am speaking absolutely of the experience I had in the past. I do not know that I have ever heard of a case where the cost of filling a piece of land might exceed the filling of the land after it was filled (T. 1669).

L. R. Sack, a witness called by the respondent, after being duly sworn, testified in substance as follows:

Direct examination:

Land Values

Cost of Filling Zone A

I live in St. Joseph, Missouri, and was formerly employed by the St. Joseph Stock Yards as superintendent and general superintendent, beginning with the organization and continuing down until I retired in April, 1932. After Mr. Black came to the yards and he became superintendent, I became general superintendent (T. 1670). I first went with the old stockyards on December 1, 1887. Prior to that I was with the stockyards located at 8th and Walnut Streets, St. Joseph, Missouri, owned by the C. B. & Q. Railroad, holding the position of foreman, and work-

ing for a superintendent whose home and office were in Burlington, Iowa. I was the person located in St. Joseph who was in charge of that stockyards. I held that position for five years, immediately prior to December 1, 1887 (T. 1671), [fol. 1433a] commencing March 1, 1892. The St. Joseph Stock Yards Company was not in existence when I was working for this Burlington Stockyards. The first stockyard at South St. Joseph was completed and opened December 1, 1887. I was the first superintendent that stockyards had. It was located at the north end of the present yards in what is now the sheep division, and directly west of it. The company that operated that stockyards was the St. Joseph Stockyards and Terminal Company. The present company, the St. Joseph Stock Yards Company, was organized about 1896 or 1897 (T. 1674). I can recall the condition of the land under what was the old stockyards before it was filled. It was low and in a swampy condition, with water standing over it in places most of the year, and there were ditches around through it, and, of course, it held more water. The water was not all level in there as there were higher places and lower places, but I would say it was a swampy condition. Before that old stockyards was built it was filled.

The condition of the land south of the old stockyards and where the present stockyards now exists, the cattle division, was low ground, but I would say that the older part of the stockyards was possibly built on a little higher ground than it was off south, but not very much. It was practically all the same thing. I heard Mr. Churchill refer to that land as typical Missouri River bottom land (T. 1673). I would think that was a pretty good description of it. People used to go hunting ducks and snipe down there. They are usually found around water. My recollection is they began to build the present stockyards some time in 1897. That was somewhat prior to the time Mr. Churchill was in charge. We put some improvements and built some yards with the old stockyards, but it was on land west of the present sheep barn, and for that matter, [fol. 1433b] extended the cattle yard of the old stockyards west to take care of it prior to Mr. Churchill's connection with it. I knew Mr. Churchill at that time and recall about when he went to work there. It was substantially at the time he stated he went to work there (T. 1674). I heard

most of his testimony (T. 1675). I heard his testimony that the land upon which they were constructing a stockyards in 1898, 1899, and 1900 had to be filled. The fill came from the hills east of the stockyard. They are commonly known as King Hill. I heard his statement about the approximate depth of the fill. I agree with it. It corresponds to my recollection. I note the yellow lines on Government Exhibit No. 103 wherein Mr. Churchill indicated the location of the stockyards built by him. That is the approximate location of the construction that took place at that time. Additional portions of the stockyards were constructed from time to time after Mr. Churchill left St. Joseph (T. 1676). I was employed by the stockyards during those times. I heard his statement as to a portion of Zone A which he filled. I agree with it. Approximately all of the balance of Zone A was filled except the unoccupied space west of the hog shed. The balance of Zone A would be filled as we would need it from time to time, and that continued from 1900 down to approximately 1918.

I have seen the original map from which the photostat map which is Respondent's Exhibit No. 113 was made (T. 1677). I would say that the first time I saw it was about 1896 or 1897. At that time it was in the possession of the Stock Yards Company. To my personal knowledge it has been in the possession of the Stock Yards Company at least up to the time I left its employ. I put the number 61 on the map which is crossed out at the top. That is my handwriting. [fol. 1434] I was with Mr. Churchill when the first four test holes were being inspected on Monday afternoon. I heard his testimony about these test holes, which statement is substantially correct (T. 1678). From my knowledge of conditions which existed in 1896 and 1897 at the St. Joseph Stock Yards and my knowledge of the map which is Respondent's Exhibit No. 113, I have an opinion as to whether or not that map accurately states the elevation of the portions of the St. Joseph Stock Yards Company's land which are shown thereon. My opinion is that this was the elevation of the land at that time, at the time it was made before the filling was done and any improvements put on it. I was asked by counsel for respondent this fall or winter if I recalled such a map being made at the time of the original construction of the yards, and I said then that there was such a map. I supposed the stockyards still had it. We

then searched for it and found that particular map which is Respondent's Exhibit No. 113 (T. 1679).

Cross-examination:

The old stockyards which was located where the sheep barn now is was owned by local people. At the time the old stockyard was located at that place there was vacant land north of the location like there is today. Part of the land that is north of the location that is north of the present Belt Railroad tracks has been filled. Land belonging to the Stock Yards Company has been partially filled in just a small space north of the Belt Railroad tracks. At the time the old stockyards was put in there in 1887 there were three packing plants in existence in St. Joseph (T. 1680). They were not near the old stockyard. There was one packing plant in the course of construction about that time or shortly afterwards which was near the old stockyard. There was no occasion for a railroad before the old stock- [fol. 1435] yard was built, and there was none there. The Belt Railroad and other railroads came during the process of the building of the stockyards. I could not state why the owners of the old stockyards selected that location. I would not say that it was strange that they picked out a spot like that (T. 1681). I would not say that they picked out the worst spot down there in the whole area in which to locate their stockyard. It was a spot that was chosen, that they thought they could construct a stockyard on, and did. It was typical of the land around it, just a broad general area of land, all about the same kind, and they chose this place for a stockyard. The old stockyard did the same general kind of business that the present stockyards does, that is, it received livestock and handled it for the owners. I was known as superintendent of the stockyard from 1898, when the new stockyards were built, up to the time Mr. Black came, and then I was called the general superintendent. There was a manager for the Stock Yards Company. My position as superintendent was practically the same as Mr. Black's is now. (T. 1682), and I had practically the same duties as Mr. Black has now. I heard Mr. Churchill describe this strip of pens and loading and unloading dock, and so forth, that was built under his engineering supervision. I have had access to old records of that day other than this map. There are a great many of the old records of that construc-

tion still in existence. I cannot say that they are all there. I know where they are practically kept at the stockyards office (T. 1683) in the Exchange Building. I do not have any recollection of what it cost to build the part of the stockyards that Mr. Churchill superintended. I could not even give an approximate figure. I never went into anything like that. That applies to practically all the construction that was done down there while I was connected with [fol. 1436] the stockyards. I did not know the cost. The construction work that was done after Mr. Churchill left was done with stockyard labor like Mr. Churchill described his construction as being done. I would not say that we did not use any union labor because we made no inquiry as to whether a man was a union man. We just employed them without knowing whether they had a union card or not (T. 1684), and paid them the wages prescribed by our company without regard to the union scale. I left the employment of the Stock Yards Company on April 1, 1932. I was general superintendent up to that time. Up to that time there were from time to time structures built on the stockyard. There might have been some building like a scale house let by contract. I am not positive about that. Something like a brick-laying firm, or something like that might have been built, but it would be just a small portion of the thing. Of course, I do not think that was hired by day labor like you would a carpenter or anything like that. It would not possibly have been that way. Other than those possible exceptions we used stockyard labor employed by the Stock Yards Company. I could not say about the union wage scale because I don't know anything about it (T. 1685). As far as I know I did not employ them on the basis of having a union card or paying a union wage scale. As to whether they had a union card or as to whether our scale was the union wage scale, I did not inquire to find out (T. 1686).

Redirect examination:

None of the managers of the respondent are living other than J. O. Barkley and C. F. Topping. I do not know what the union wage scale was during that time, 1896 down to 1932. I never had occasion to know except possibly by hearsay. I do not know whether the wages actually paid [fol. 1437] were union wages or some other wages (T. 1686).

Depreciation Reserve

MR. HENRY J. SAUNDERS, a witness called by respondent, being duly sworn, testified in substance as follows:

Direct examination:

Qualifications.

I am a consulting engineer and statistical analyst at Washington, D. C. I was first employed in the engineering department of the Union Pacific Railroad in 1899 and have continuously practiced my profession during the 33 years since that time. I was graduated from the University of Wisconsin in 1903, with a degree of Bachelor of Science and Civil Engineering. In 1910 the same university awarded me the higher degree of Civil Engineer, after I had presented a thesis on the subject of railroad construction costs.

I was employed on railroad work for the Union Pacific Railroad and on irrigation work for the United States Reclamation Service, and the engineering firms of Arnold and Company of Chicago, and Ford, Bacon and Davis of New York, prior to 1914. I also practiced as consulting engineer in Montana from 1912 to 1914.

In July, 1914, I entered the service of the Interstate Commerce Commission, Bureau of Valuation, at San Francisco, California, first as office engineer, and later as supervising (T. 1687) engineer. I was continuously in the employ of the Commission until November, 1928; the period from 1921 to 1928 being in Washington, D. C.

During the time I was with the Interstate Commerce Commission, both in San Francisco and in Washington, I had charge of all cost accounting work in connection [fol. 1438] with the Bureau of Valuation. During this period I had a number of accountants directly reporting to me who made analyses of costs under my supervision. These included not only costs of construction projects, but studies of operating and maintenance expenses. All this work necessitated intimate knowledge of the various Interstate Commerce classifications of accounts and the proper separation of charges as they appear in the carriers' books.

During the period 1922 to 1928, I appeared as the Commission's witness with respect to cost and valuation matters in over 100 hearings. During the 14 years I was with the Interstate Commerce Commission, as a part of my duties I was called upon to fix the condition of railroad property and to determine service lives to be used in figuring the straight line depreciation adopted by the Commission in its valuation reports. This study of service lives included much original investigation not only from carriers' records, but from the records of all available studies. Much time was spent by me in analyzing and tabulating service-life statistics developed by laboratories and Government agencies. These related to all forms of materials, including those generally used in stockyards (T. 1688). Subsequent to 1926, the Interstate Commerce Commission issued its proposed order in Docket 15,100, Depreciation Charges of Railroad Companies and Docket 14,700, Depreciation Charges of Telephone Companies, and I was assigned by the Director of Valuation to the hearings in these cases. I attended all of the hearings and prepared memoranda and questions for the use of the Commission attorney. I also prepared voluminous exhibits relating to this accounting depreciation, that is, exhibits dealing with service lives and other factors.

Since 1928, in my consulting practice, I have frequently [fol. 1439] been called upon to advise carriers as to depreciation accounting and in one or two instances advised as to the compliance with the Commission's order in this depreciation docket which was later suspended.

I have been engaged as consulting engineer and analyst since November, 1928, specializing in railroad and utility matters and have appeared before the Interstate Commerce Commission in over 30 cases relating to valuation and recapture of excess earnings.

I also appeared for Swift and Company and other packers in the Eastern Livestock cases, Docket 16,746, where I presented an analysis of the various cost exhibits relied upon by the railroad.

I was retained by the Public Utilities Commission of the District of Columbia in connection with the valuation of the Washington Gas Light Company; by the U. S. War Department, in the (T. 1689) Bonnet, Carre, Spillway Case before the U. S. District Court of Louisiana; by the Gandy

Bridge Company of St. Petersburg, Florida. For this latter, which is a five million dollar toll bridge, I not only made an appraisal of the property for rate making purposes, but also prepared certain accounting adjustments for consideration of the Florida Railroad Commission which were adopted by that Commission as a basis for the Gandy Bridge Company's restatement of its account.

It has been necessary in all of my railroad work to analyze the carriers' accounting records and apply the Commission's various accounting classifications.

In my consulting work, I have advised carriers as to the accounting procedure and have conferred many times with the Interstate Commerce Commission's Bureau of Accounts and the Accounting Section of the Bureau of Valuation with respect to interpretations of the Commission's orders to carriers (T. 1690).

[fol. 1440] I have recommended various adjusting entries for these carriers and have prepared accounting reports, such as the annual recapture reports to the Bureau of Finance and returns to the Commission Valuation Orders 3 and 25. I have also assisted many carriers in the preparation of certain parts of their annual reports to the Interstate Commerce Commission, Bureau of Statistics. I have used the annual statistics reports of certain carriers and the Commission's reports of statistics of railways many times in connection with my cost study. I have also developed statistics from other agencies than the Interstate Commerce Commission, such as the Bureau of Railway Economics, the Department of Labor, the Department of Commerce, and other sources of statistical information in Washington. I have written several articles for magazines, such as Engineering News, Traffic World, and Railway Age, relating to valuation subjects. The Engineering News of June, 1927, published an article by me on the subject of depreciation. I have also given addresses upon valuation matters before the Washington Society of Engineers, the engineering students of the University of Wisconsin, and George Washington University. It has been a part of my duty at all times to keep informed upon valuation subjects, and I have endeavored to read all current articles and comments upon court decisions, as well as reviewing a great deal of the literature available in the Library of Congress. I consider that I have made as

thorough a study of the theories of valuation as it has been practicable to do. I am a member of the American Society of Civil Engineers, and the Washington Society of Engineers (T. 1691).

I have no connection with respondent, other than my employment in this case. I have been asked by respondent to make an independent investigation on the question [fol. 1441] of depreciation reserve which should be allowed in this case. I have done so. I was given a free hand to make an entirely independent investigation. No one has asked me to change any of my conclusions. These conclusions that I am presenting are the result of my own independent investigation (T. 1692). All the records I used were either examined by me personally or furnished to me by respondent. I have also examined respondent's property.

General Discussion of Depreciation

In my experience as an engineer I have made a particular study of the subject of depreciation. During the past 18 years, since my first association with the Interstate Commerce Commission, I made numerous statistical studies of service lives of property, to determine, for the purpose of valuation accounting or expert testimony, the actual experience with respect to total useful life of certain engineering construction materials. These have included lumber, masonry, steel rails, structural steel, cross ties, brick, cast iron pipe, and numerous items of less importance. Also, in the course of my work, I have made many comparisons of the accounting for depreciation, with its statistical studies of service life just referred to. I recall one particular instance in connection with the valuation of the properties of the Washington Gas Light Company. Certain data, with respect to the retirement of gas meters, was studied to ascertain the normal service life, and the comparison with the Gas Company's account for a uniform retirement allowance for these meters. I have also advised certain railroads with respect to accounting procedure in connection (T. 1693) with their compliance with the Commission's order for depreciation accounting, known as Docket 15,100.

Beginning very early in my career as an engineer, I have [fol. 1442] made studies of the subject of depreciation, in-

cluding a perusal of court decisions, tax books and numerous magazine publications on the subject. Beginning in 1914, when I went in the Interstate Commerce Commission, and up to the present time, I have continually made a very comprehensive study of this subject.

It should be understood that in defining depreciation I am talking in general terms, but in the course of my testimony, in order that there may be no confusion, I wish it clearly understood that the depreciation I am discussing, unless I make an exactly contrary reference, refers to the necessary accounting procedure rather than the depreciation determined in valuation. I mean the depreciation determined by inspection as described by previous witnesses here. One author has described depreciation as "expired capital outlay," which means that part of the total usefulness of a definite item of property has been used up in the service of the public. The generally accepted definition of "depreciation" is the lessening of value or worth. In some instances, it has been held that as (T. 1694) long as a plant is in good operating condition and giving substantially as good service as a new plant, there is no accountable depreciation. In those cases, the character of the service measures the depreciation instead of the loss of value or worth. In accounting, the sum set aside to represent the real lessening of value or worth of the property may be more or less than the visible or apparent depreciation observable to the naked eye. In any method of accrued depreciation, the ultimate importance is that there shall be included in the earnings, the whole value of the property unit by the time it ceases to exist, omitting from consideration, of course, any scrap value. The straight line method of depreciation provides for this limit 100 per cent accrual, strictly, but the sinking fund annuity or [fol. 1443] compound interest method provides a smaller sum, and the total, or 100 per cent value, is obtained by assuming that the annuity will be invested or it will earn interest, and that this interest, plus annuity itself, will ultimately reach 100 per cent investment. Definitions approved by the courts generally distinguished depreciation from current repairs (T. 1695), for instance, in Cumberland T. and T. Company v. City of Cumberland, 187 Federal 637, 653, the following definition was accepted: "Depreciation may be defined as the loss in value of some de-

structible property over and above current repairs." Similarly, i nPeople ex. Rel. Jamaica Water Supply Company v. Tax Commissioners, 196 New York, 39, 57, it was described as the "Constant deterioration of a plant which has not been made good by ordinary repairs" (T. 1696). The two main groups of causes of depreciation are those which are due to physical change which generally can be foreseen with some degree of accuracy, and those which are functional and cannot be foreseen in the sense that we can determine exactly when they will occur. The physical causes are those due to use and the passage of time and exposure to the elements. These produce the wear and tear of the property. The functional causes include those due to obsolescence, inadequacy and accident. We know that there are such causes continuously imminent, but we never know the exact time that such cause for depreciation may occur. From the standpoint of accounting for depreciation, we must be prepared to adequately protect the investment against any of these causes which I have mentioned.

Depreciation was recognized in England by the Customs and Inland Revenue Act of 1878. In this country, certain court decisions as early as 1863 mentioned accounting for depreciation. However, as early as 1909, the United States [fol. 1444] Supreme Court in the City of Knoxville v. Knoxville Company, 212 United States 1, held (T. 1697): before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste without making a provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired so that at the end of any given term of years, the original investment remains as it was at the beginning." The preponderance of the court decisions since the Knoxville case is that the depreciation allowance should include accrued and actual depreciation, as well as a provision for obsolescence, inadequacy and other functional depreciation. In as recent a case as the United Railway and Electric Company v. West, 280 United States 234, the Supreme Court of the United States said: "one

of the items of expense to be ascertained and deducted is the amount necessary to restore property worn out or impaired so as continuously to maintain it as nearly as practicable at the same level of efficiency for the public service. The amount set aside periodically for this purpose is the so-called depreciation allowance."

The Interstate Commerce Commission in its 1914 classification of accounts made definite provision for certain depreciation accounting, and in so far as equipment is concerned, the requirements of the Interstate Commerce Commission with respect to depreciation have been very definite. In 1923, the Interstate Commerce Commission began a long (T. 1698) series of hearings in Dockets 15,100 and 14,700 with the object of providing definite depreciation [fol. 1445] accounting for all railroad and telephone property (T. 1699). The final order of the Commission was dated July, 1931, but at the present time, the order has not yet become effective. The principles are, however, definitely established with the straight line method and the group system of depreciation accounting definitely adopted. The carriers came before the Commission with the request that owing to the difficulties of installation of the necessary accounting, they would require some time, until January, 1934, before they could effectively adopt this order, and the Commission granted that request.

Necessity for Depreciation Accounting

At the outset we must concede, as so clearly stated by the courts, that during the service life of its property, the company is entitled to "see that from earnings the value of the property investment is kept unimpaired." The depreciation and ultimate retirement of component units are unpreventable. Therefore, such costs become a (T. 1700) part of operating expenses, regardless of accounting methods used in making changes. If there has been no reserve, the retirements represent an economic loss to the investor. Regardless of whether or not, in accounting depreciation, charges are made and resultant reserve set up, the company must procure out of its assets sufficient funds to make all necessary replacements for parts of its property, as they are retired from service, either from worn out condition, obsolescence, or by accident. It remains, therefore, to de-

termine what is a fair method of setting up the depreciation reserve in the accounts of the particular company.

Methods Used in Depreciation Accounting

In accounting, three principal methods have been used; one, to charge the entire cost of any new unit of property [fol. 1446] directly to operating expenses; two, to charge the retirements of any old item of property directly to operating expenses; and, three, to equalize the annual charge to operating expenses by spreading over the estimated service life of such component unit annually its yearly proportion of the installation cost. The third method was adopted by the St. Joseph Stock Yards Company, because, so far as humanly possible, it allocates to each year its proportionate expense of all costs for retirement or replacement. The depreciation reserve is an accounting feature to show the annual spread of these expenses (depreciation), and the resultant net accruals.

Since these spreads are based on estimated service lives, it follows that on some units the charge or spread will be excessive, on others, insufficient; but it is believed that the average obtained is (T. 1701) fairly accurate, and, as data is obtained from time to time, the spread is checked up, and, if necessary, corrected on some of the units terminated. The depreciation reserve in itself is a measure of the economy of the operation of a property, and the adequacy of the rates. The principal accounting reason for the reserve is to clear the cost of large unit retirements which would be too large to charge to any one year's operating expense. Since the operating expense account is not available, some substitute must be obtained, and "depreciation reserve" is that substitute.

Comparison of Straight Line and Sinking Fund Methods

Some years ago, the American Society of Civil Engineers, of which I am a member, presented a voluminous report by one of its special committees on the subject of valuation for rate making. In that report, the committee gave the following definitions for those two methods for setting up depreciation:

[fol. 1447] "Straight Line Method

"This method makes provision from the earnings for equal annual depreciation allowances of such size for any

property unit that the sum of the allowances without interest will equal the cost, less salvage, of each unit when it reaches the end of its estimated service life. The annual depreciation allowances by this method are each equal to the cost, less salvage, of the property unit, divided by the number of years of its expectation of life (T. 1702).

"Sinking Fund Method

"This method makes provision from the earnings for equal annual depreciation allowances of such size for any property unit that if these allowances are invested in a sinking fund, they will, with accumulations of interest, compounded annually, amount to the cost, less salvage, of the unit at the time when it reaches the end of its estimated service life."

My experience leads me to concur in the definitions I have just been giving, which were made by a committee of the American Society of Civil Engineers.

The Interstate Commerce Commission, in its first order in Docket 15,100, dated August 23, 1923, gave a comparison of the sinking fund method and the straight line method as follows:

"Sinking Fund Method

The sinking fund method, like the annuity method, involves complicated interest computations. It also recognizes a uniform annual charge to operating expenses, but its application requires that the annual allowance shall be actually set aside in a special fund only invested in approved securities which, with interest compounded, shall, during the life of the depreciating property, accumulate a sum equal to the service value. As in the annuity method, the rate of interest (T. 1703) is one of the controlling factors in determining the annual charge. It is necessary to find a sum which will, when added to the interest accumulations, equal the service value at the expiration of the period. It should be remembered, however, that under the [fol. 1448] annuity method the interest is hypothetical, while, under the sinking fund method, the interest may be actually earned. The sinking fund increases not merely by the contributions but by the interest accumulations of these

contributions and it, therefore, follows that the longer the sinking fund is in operation, the larger the interest accumulations will be. At first thought, it may appear that the direct cost of maintaining such a fund grows smaller with the increase in the number of years, but the fallacy of this is apparent when it is remembered that the contributions to the fund are wholly withdrawn from the business where they might be employed at a greater profit than could be reasonably expected from the sinking fund. However, under the sinking fund method, the interest accrued is applied to reduce the loss of property consumed in operation which otherwise is chargeable to operating expenses."

The reference is I. C. C. Docket 15,100, order of August 23, 1923, pages 23 and 24 (T. 1704).

"Straight Line Method

The straight line method provides for an equal and constant annual charge representing depreciation or the loss of property consumed in operation to operating expenses, which, in the aggregate, is equivalent to the service value of the property or to as much of that value as has expired when the property is retired. It is the simplest of all suggested methods. It is based on the principle that each year of life of the depreciating property should bear its prorata share of the loss in service value. The resultant charge to operating expenses in each year of the service life of the property, therefore, represents its theoretical proportion of the accruing depreciation."

That is taken from the same pamphlet of August 23, 1923, page 25.

[fol. 1449] Computation of Annual Depreciation Allowance for Respondent

In fixing service lives of property, it is always necessary to assume that such property receives all necessary running repairs. In other words, a wooden building, with an assumed service life of 20 years, would, of necessity, receive several paintings within that time. If it did not, the assumed service life of 20 years at 100 per cent (T. 1705)) efficiency would be too long. In the case of the St. Joseph

Stock Yards, we have before us the service lives, as determined by the Government engineers, who inventoried the property, and it should be noted that, as a whole, the composite expected life is approximately 24.8 years. That is taken from Government Exhibit No. 114.

We know that this life could not be attained if the property was not kept to a 100 per cent state of operating efficiency, by means of necessary maintenance and repairs. At this time, I might refer to an exhibit I have prepared which shows, among other factors, the extent of the annual repairs and the percentage which the cost of such repairs bears to the investment for the St. Joseph Stock Yards (T. 1706). Repairs are found in columns 7 and 8 of Respondent's Exhibit No. 116. It will be noted that I have also shown the principal investment accounts of the company, exclusive of land, for each of the years from 1922 to 1931 (T. 1707).

Under the term "Outside real estate and buildings" I have included property shown on the company's books, which included Exchange Building, farm department, alfalfa barns, horse and mule division barns, sheep division barns, the Transit House and various miscellaneous structures and facilities. The classification conforms to that which I found the company had adopted in its records. In "Outside real estate and buildings" are included certain [fol. 1450] property which was found by the Secretary to be used and useful in the first decision in this case.

Equipment as described in my exhibits included such items as autos, horse wagons, tractors, certain hotel furnishings, Exchange Building facilities, fire protection and office furniture and fixtures. As indicated on Respondent's Exhibit No. 116, that is the property which the Stock Yards Company has classified under accounts numbered 62 to 73 (T. 1708).

Under the term "Stockyard Buildings and Improvements" I have included the cattle, hog and sheep chutes and the various pens in the stockyards division. I also included the yard buildings, scales, water mains, sewers and other facilities, besides a large number of minor structures included in what is known as the stockyards area. That property is now listed by the Stock Yards Company under its account No. 75.

The columns 7 and 8 which I have previously referred

to on Respondent's Exhibit No. 116 show the annual charges for repairs for each of the years 1922 to 1931, inclusive, and the per cent which those repairs bear to the investment in the same property. The percentage shown in column 8, in 1931, was a minimum of nine-tenths of one per cent. The maximum was reached in 1926, when 2.03 per cent represented the repairs. In my opinion, if the repairs had not been made to the extent noted, the ultimate service life of the property would have been materially shorter and either operating expenses or depreciation charges would have been considerably larger due to necessary retirements. In discussing the relation of repairs to depreciation, attention should be directed to the fact that the labor item of a repair generally is proportionately higher for the replacement of property than it had been for the same property at the time [fol. 1451] of new construction. For this reason it is more significant to (T. 1709) compare the relation of the cost of materials used in repair to the investment cost of the same materials.

Data for Respondent's Exhibit No. 117 was taken from the inventory prepared by Mr. Kosters and included in this record as Respondent's Exhibit Nos. 111 and 111-A. My exhibit shows this inventory separated as between labor and materials, and gives the percentage relationship of labor and material to the total cost. Using this estimate of the cost of materials as a guide, I have compared the actual cost of the materials used in repairs with these costs (T. 1710).

In Respondent's Exhibit No. 118 I have used Government Exhibit No. 121-A, to show the cost of materials used in repairs 1927 to 1932. The figures used will be found on pages 254, 257, 260, 263, 266, 269, 272, 274, and 277 of Government's Exhibit No. 121-A. These figures I have shown in columns 2 to 7, of Respondent's Exhibit No. 118. Attention should be directed to the fact that there are included in these costs so-called miscellaneous charges not strictly defined as materials. In other words, I found that the Government audit classifies as material, charges which had been paid to a contractor where the contractor furnished both labor and material, and similar instances where the entire expenditure was not for the material. In column 8 I have shown the material taken from the 1932 inventory as appearing in Respondent's Exhibit No. 117. In columns

9 to 14, I have shown the per cent which the material used in repairs bears to the cost of the same material in the inventory during these years 1927 to 1932. It should be noted that on the average for the property as a whole, the cost of material used in repairs was approximately seven-tenths of one per cent of the material in the inventory. At this [fol. 1452] rate, therefore, it would (T. 1711) take 143 years to completely replace the material in the property by means of repairs. The exhibit further illustrates the striking difference between cost of the material used in repairs and the total cost of repairs, whereas if we compare the figures in columns 9 to 14 in this exhibit with the total figures in column 8 of Respondent's Exhibit No. 116, we note that according to Respondent's Exhibit No. 116 the percentage relationship of repairs to investment was, in all cases, more than twice the percentage relationship of the material used in repairs and the material contained in the inventory. In accordance with Respondent's Exhibit No. 117 we see that the material represented about 69 per cent of the property inventoried.

In Respondent's Exhibit No. 119, which is similar in form to Respondent's Exhibit No. 118, I have taken the actual charges on the company's books for materials and supplies, and have related these charges for the 1932 inventory. This exhibit will differ from the figures shown in Respondent's Exhibit No. 118 for the reason that the Government audit includes all the miscellaneous (T. 1712) charges under the heading of material. The percentage relationship shown in columns 9 to 13, is, of course, much less than the percentage relationship shown in columns 9 to 14 of Respondent's Exhibit No. 118, which serves to illustrate the minor significance of the repairs installation as depreciation charges. Adopting for the moment the extreme theory, with which I disagree as a matter of principle, that all repairs should be included with depreciation charges, where a reserve is maintained, it is apparent from these exhibits that only material charges should receive consideration under a theory of that kind. On such a basis the depreciation charges, plus materials used in repairs, with a fair installation cost added, would then represent the de- [fol. 1453] preciation accrual. A further reason for not including current repairs with depreciation charges is found by studying the percentages on these exhibits. In the

inventory as shown by Respondent's Exhibit No. 117, the material varies from 51 per cent to 84 per cent of the total cost, with an average of 69 per cent.

In the repair items as shown by Respondent's Exhibit Nos. 116, 118 and 119, the materials in the total repairs vary from 24 per cent to 30 per cent in Respondent's Exhibit No. 118, and from 12 per cent to 23 per cent in Respondent's Exhibit No. 119. It is apparent, therefore, that the labor cost of repairs should not be used to extinguish the depreciation reserve made up of accruals upon a proportionately less investment cost of labor (T. 1713). Respondent's Exhibit No. 116 shows a very uniform accrual for depreciation from 1922 to 1931, and while the investment account has increased to some extent, the depreciation charges have remained remarkably uniform. As noted above, the purpose of the reserve is to take care of retirements and replacements and I call attention to the figures in column 10 of Respondent's Exhibit No. 116 which show the per cent which retirement bears to investment. These are not much in amount, but as shown by the exhibit they are facts which must be faced. As was well stated by the Supreme Court, the cost of these replacements is an item which the company is entitled to recoup from earnings (T. 1714).

Respondent's Exhibit No. 120 shows by the principal accounts of the company the charges each year to operating expenses for depreciation, the adjustments to the reserve are not included in this exhibit. It will be noted that prior to 1923, depreciation charges were on a different basis than subsequent thereto. At this time the company went [fol. 1454] under regulation and also adjusted its accounts in accordance with a new inventory. As shown by Respondent's Exhibit No. 116, the total retirements in 1929, which was the maximum year, reached 2.25 per cent of the total investment. The total depreciation accrual in that year was only 4.81 per cent of the investment. The accrual for outside real estate and buildings was 3.78 per cent, whereas the retirements amounted to 4.49 per cent. Similarly, in 1927, the retirements of outside real estate and buildings amounted to 5.90 per cent, whereas the depreciation accrual amounted to only 3.87 per cent. These may be termed the peak condition of a comparison of retirements to accrued depreciation, but such condition must always be antici-

pated and met, and it is futile to assume that during the period of record we have as yet encountered the maximum retirements. The two important factors with respect to retirements which may affect this case are the retirements due to Governmental requirements, and due to economic conditions. The first of these would hardly be classed as obsolescence, although the second is clearly obsolescence. In the order of the Secretary of (T. 1715) Agriculture, dated July 20, 1931, it is my understanding that it was proposed to eliminate from the rate base of this company two principal items described in brief as the southern cattle division, and the horse and mule division. Under this order, it is my understanding that the Secretary found this property no longer used and useful. The use of the southern cattle division had been discontinued as such under a previous order of the Secretary and the use of the horse and mule division as such was curtailed due to economic conditions.

In Government Exhibit No. 114, the southern cattle division is given a reproduction new value as of 1932 of $41,696, and the horse and mule division is given a reproduction new [fol. 1455] value of $142,295. The investment account for these items of property is much higher. In the present case, witness Christensen also recommended the elimination of certain property as not used and useful, which was not excluded in the former decision of the Secretary. This included $157,930 of physical property and $72,693.40 of land value consisting of the packers' storage pens, packers' stock driveway, packers' new stock viaduct, one-half of Packers Avenue, commission officers in sheep division, and the Transit House. From this property, no independent revenue could be derived, if it were eliminated from the stockyards' used and useful property. There is no dispute as to the ownership of this property, nor to the fact that it is used by the Stock Yards Company. Therefore, the classification of this property as not used nor useful (T. 1716) by the Secretary virtually forces its retirement. In Respondent's Exhibit No. 121 I show the cost of retirements classified as between those due to accident, those due to obsolescence and inadequacy, and those due to wear and tear. I also show the total retirements not replaced. Under each of the headings of this exhibit, I show the percentage which each class of retirements bears to the total investment, and, similarly, the percentage which it bears to the total retirement. In the

exhibit I show that between 1922 and 1931, $46,177 of property was retired and not replaced. If the Secretary's order with respect to the classification of the southern cattle division and the horse and mule division is sustained, this property should also be classed as property retirement and not replaced, and a suitable depreciation entry should be made for that form of retirement. If the further recommendations for elimination made in this case are approved, this retired property should be similarly classified. The (T. 1717) public should pay for the retirement through [fol. 1456] rates and the accounting should include it as an ultimate charge against income. Under the group system of accounting, items such as these would go into any depreciation reserve already accumulated. It is apparent, therefore, that is a study, such as I will later present, we should include retirements such as these to accurately reflect what has taken place with respect to the depreciation reserve. This certainly emphasizes what the Supreme Court has said respecting the protection of the investment against impairment. It will be noted that as of 1931 the record of the ten years of retirements shows that 17.86 per cent of the retirements were due to accident such as fire; 30.12 per cent represented property either obsolete or inadequate; 52.02 per cent of the property retired was worn out or otherwise rendered unserviceable. It should also be noted that of the total investment, only 1.67 per cent of the property was not replaced and that this retired property represented 25.28 per cent of all retirements (T. 1718).

The figures in Respondent's Exhibit No. 122 are true and correct statements of the records of respondent as shown in its books of account, except in the percentage requirements, and so forth, that have been figured by me. In this exhibit I have taken the recorded accounting from 1922 to 1931, inclusive, and have shown the three principal subdivisions of the investment accounts. I have shown in column 4 the recorded investment of the property retirement in each of the years, and in column 5 the accrued depreciation on that property up to the date of its retirement. Column 6 shows the percentage which this accrued depreciation bears to the actual investment in that particular property. The important fact with respect to this column is that the depreciation accrual shown does not equal the investment. Columns 7 and 8 show the net loss and percentage

[fol. 1457] loss which the retirement of the property represented, when compared with the amount of depreciation accrued. In columns 9, 10 and 11, I show the complete accrual of retirements and the corresponding depreciation from the year 1922 to the year 1931, inclusive. As will be noted from the last figure in column 11 on sheet 2, over this period of ten years, the retirements were actually covered by the depreciation accruals to the extent of 56.96 per cent at the time of retirement (T. 1719).

Respondent's Exhibit No. 123 is a true and correct statement of what it purports to show. This exhibit shows both repairs and retirements accrued from 1922 to 1931, with a percentage comparison to the total investment. Similar to my preceding exhibits, I have shown the three principal subdivisions of the investment account. It should be noted that in the year 1931, 6.62 per cent of the total property had been retired and that the cost of repairs in the same period had amounted to 15.05 per cent of the total investment (T. 1720).

Respondent's Exhibit No. 124 is similar in form to Respondent's Exhibit No. 123 but differs in that it compares the total amount of depreciation actually accrued on property retired with the total accrued depreciation reserve. Column 4 of the exhibit shows the accrued depreciation reserve on all property. Column 5 shows the amounts which represent debits to this depreciation reserve due to retirement of property. It should be noted that the initial accrued deductions for 1922 represent the total of all recorded debits up to the date of the appraisal and adjustment in the company's accounts. The total of all deductions as shown in column 10 for the year 1931 of 7.07 per cent, when compared with the total on Respondent's Exhibit No. 122 of 56.96 per cent, indicates that, if depreciation accruals had been made on an adequate basis for this property re- [fol. 1458] tired, approximately 12.5 per cent would represent the total deduction from the depreciation reserve. At this point it should be noted that the accrued depreciation reserve shown in column 4 and (T. 1721) accrued deductions in column 5 for the year 1922 represent accounting prior to January 1, following the passage of the Packers and Stockyards Act, and thus prior to any possible regulation. It seems that the comparison, therefore, of any ac-

counting carried on prior to a lawful order fixing rates would have no great relevancy (T. 1722). Considering the matter of retirements, the exhibits I have offered show that in so far as the past experience of the company is concerned, the assumed service life upon which the existing accrual for depreciation is based has not been reached at date of retirement. That is the company's actual experience to date.

The comparative weakness of the sinking-fund method may be illustrated by the following hypothetical case: Upon the straight-line basis, without salvage, for each $1,000 of investment for a 10-year service life we would accrue $100 per year depreciation. Under the sinking-fund method, assuming that the reserve will earn 5 per cent, the annual accrual would be $79.50, chargeable as an operating expense, plus whatever compound interest is earned. If our assumption of service life was in error, and the property was retired for any reason in 8 years instead of 10 years, the straight-line basis would have shown $800, or a deficiency of only $200 below the $1,000 value; whereas, the sinking-fund method would have shown $636, or a deficiency of $364. The error in assumption of service life was only 20 per cent. Now, in theory at least, the funds accrued under the sinking-fund method were supposed to bring in a return of 5 per cent compounded annually. On this basis, the total fund at the end of 10 years would be [fol. 1459] $1,000, but at the end of 8 years, it would be $759.15, or a deficiency of $240.85. The basic difficulty, however, with respect to the (T. 1723) sinking-fund method is the assumption with respect to the earning capacity of the fund. It is impossible to predict how much the fund will earn or at what rate of interest it may be invested. In this case, the company's experience with respect to retirements to date does not justify the use of the sinking-fund method. In Respondent's Exhibit No. 125, I have assumed a total investment of $1,000 and a 10-year service life. On the straight-line basis, the annual charge for depreciation, as shown in column 3, would be $100. On the sinking-fund basis, I have made three assumptions as to the interest which the fund would earn, that is 6 per cent, 5 per cent, or 4 per cent. The annual charges which will appear as operating expenses are then shown in columns 4, 5, and 6, respectively, to be $75.87, $79.50, or $83.29. The interest

which the sinking fund has to earn in order to meet the total requirements of depreciation is shown for the respective rates in columns 7, 8 and 9. The total accrued depreciation on the straight-line basis and the accrued depreciation charged, plus (T. 1724) assumed interest earned on the sinking-fund basis, at the different rates, are shown in columns 10 to 13, inclusive. It should be noted that on either basis the total accrued depreciation plus the interest reaches $1,000 at the end of the 10th year. But it should be further noted that the sinking fund accrual with any of the rates of interest assumed is always below the accrued depreciation on the straight-line basis, that is, up until the 10th year. Thus for any property retired before its service life has expired, there will be a greater deficiency in the accrued depreciation reserve under the sinking-fund basis than there will be under the straight-line basis. That is exactly what has happened with all the retirements of record for the St. Joseph Stock Yards.

[fol. 1460] RESPONDENT'S EXHIBIT No. 125

Statement Showing Typical Comparison of Progressive Depreciation Accruals Under the Straight Line and Sinking Fund Methods

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Year	Total Investment	Annual Charge				Interest On Sinking Fund			Total Accrued Depreciation Including Sinking Fund Interest			
		Straight Line	Sinking Fund						Straight Line	Sinking Fund	Sinking Fund	Sinking Fund
			6%	5%	4%	6%	5%	4%		6%	5%	4%
1	$1,000.00	$100.00	$75.87	$79.50	$83.29	.....	.....	.....	$100.00	$75.87	$79 50	$83.29
2		100.00	75.87	79.50	83:29	$4.55	$3.98	$3.33	200.00	156.29	162.98	169.91
3		100.00	75.87	79.50	83.29	9.38	8.15	6.80	300.00	241.54	250.63	260.00
4		100.00	75.87	79.50	83.29	14.49	12.53	10.40	400.00	331.90	342.66	353.69
5		100.00	75.87	79.50	83.29	19.91	17.13	14.15	500.00	427.68	439.29	451.13
6		100.00	75.87	79.50	83.29	25.66	21.96	18.05	600.00	529.21	540.75	552.47
7		100.00	75.87	79.50	83.29	31.75	27.04	22.09	700.00	636.83	647.29	657.85
8		100.00	75.87	79.50	83.29	38.21	32.36	26.31	800.00	750.91	759.15	767.45
9		100.00	75.87	79.50	83.29	45.05	37.98	30.70	900.00	871.83	876.63	881.44
10		100.00	75.87	79.50	83.29	52.30	43.87	35.27	1,000.00	1,000.00	1,000.00	1,000.00
Total		1,000.00	758.70	795.00	832.90	241.30	205.00	167.10				

[fol. 1461] Respondent's Exhibit No. 126, consisting of two sheets, the first showing stockyards buildings and improvements, and the second showing outside real estate, is a statement of retirements agreeing with Respondent's Exhibit No. 123 (T. 1725). Column 1 shows the description of the property retired; column 2, the recorded investment in that property; column 3, the year of retirement; column 4, the rate of depreciation which was used from 1922 to the date of retirement; column 5, the actual years of service subsequent to 1922; column 6 shows the assumed service life on the basis of the rate used; column 7 shows the annual charge on the straight-line basis; column 8 shows the annual expense charge on the sinking-fund basis; column 9 shows the difference each year between the two charges; column 10 shows the total accumulated accrual on the sinking-fund basis, including the 6 per cent assumed earning of the fund compounded annually from 1922 to the date of retirement; column 11 shows the accumulated accrual on the straight-line basis from 1922 to date of retirement; and column 12 shows the deficiency after comparing the two methods. It should be noted that if 5 per cent compound interest was used, the deficiency would be somewhat greater. It should also be noted that in no instance does the sinking fund basis, plus interest, equal the straight-line accrual. This is a very strong argument in favor of the straight-line basis, since there is never any assurance that the sinking fund will be invested so as to earn even the interest assumed.

In the course of my experience as an engineer, it has been my duty to inspect the physical property of certain companies for the purpose of determining service lives and depreciation reserve (T. 1726). I have made such an inspection of the property of respondent (T. 1727). I have also studied the records which I submitted in the form of [fol. 1462] exhibits in this case to determine the facts actually experienced with respect to the life of this property. The exhibits which I shall presently offer show rates of depreciation based upon assumed service life. All property having similar service life I placed in separate groups. Thus, under the heading of outside real estate, I grouped together all brick buildings upon which I have estimated an average service life of 50 years. The respondent in its previous accounting, used 33⅓ years. Mr. Henrici in Government Exhibit No. 114 has used 40 years for the principal

structures in this group. The most important building in the group is the Exchange Building, and it has already reached an age of 34 years. Normal repairs to this building have generally averaged about one per cent of its investment cost per annum. The Bureau of Internal Revenue, in one of its bulletins, recognized 40 years' service life for ordinary office buildings constructed of bricks. In view of the present age, condition, and other factors, I have mentioned, I believe a 2 per cent rate, based upon an average year's service, average service life is fair and reasonable for the brick buildings in this classificaton (T. 1728).

For the frame building inventory under outside real estate, I have recommended a service life of 25 years. The respondent company used 16⅔ years in its previous accounting. Mr. Henrici recognized 20 years for many frame structures. He includes a great deal of frame construction with the horse and mule barns, for which he gives a 40-year life. The Bureau of Internal Revenue has recommended 25 years for frame barns, sheds, grain elevators, and factories. For certain frame dwelling houses they recommend 30 to 35 years (T. 1729).

The service lives permitted by the Bureau of Internal Revenue are in part a factor upon which the income tax [fol. 1463] paid by the corporation is directly determined. The Bureau of Internal Revenue, of course, check any set-up of depreciation made by a company under investigation, and in so far as they find radical departures from these recommended service lives, they, of course, insist on adjustments, so that the recommended service lives of the Bureau of Internal Revenue are guides that are used to determine whether or not a particular company is following what might be termed a consistent and reasonable practice. As an average, the service lives recommended in the bulletins to which I have referred are those generally permitted in determining income tax (T. 1730).

For the frame construction included in stockyards buildings and improvements, which includes the stock pens, chutes, and so forth, with many smaller structures, I recommend a 20-year service life. The respondent company used 16⅔ years, and Mr. Henrici in Government Exhibit No. 114 has recommended 15 and 20 years. The property in this account varies in age, and much of it is in what may be termed a second or third cycle of replacement. Repairs generally have cost about 1 5/10 per cent of the investment annually. On the whole, therefore, I feel that the

average life of 20 years for the stockyards frame construction, and 25 years for the outside real estate frame construction, is ample. In the matter of water lines, I have used a service life of 80 years (T. 1731). Originally, the respondent company used 25 years, and Mr. Henrici, whenever he has shown this property separately, has used 50 years. I have made a number of studies on the life of cast-iron pipe, and find that wherever construction has been well performed in the first instance, and operation has been continuous over a number of years, the life of cast-iron [fol. 1464] pipe is extremely long. The Bureau of Internal Revenue recommends 75 years for 8-inch and larger pipe, and 50 years for smaller pipe. For sewers, I have used 66⅔ years for service life. The company used 25 years, and Mr. Henrici uses 50 years where he has reported the item separately. Many city sewers now in good condition are much older than 50 years. For the type of sewer used by this company, I believe a service life of 66⅔ years is very conservative. With respect to paving, I have used 25 years for brick, 33⅓ years for concrete, 25 years for asphalted concrete, and 12½ for asphalt. The company used 20 years for brick asphalted concrete with services lives for other forms of pavement the same as I recommended. Mr. Henrici, where he mentions pavement separately, uses 35 years. This type of pavement, where used in cities, has generally lasted for as long a time as I have adopted as a fair service life. After inspecting this property, I am of the opinion that these service lives are ample. The changes I have recommended are the result of my inspection (T. 1732) of the property and the records relating to repairs, replacements, and retirement, previously presented in my exhibits. The service lives used by the company were probably based upon the best information obtainable at the time they were fixed. Now, however, in view of the past experience of the company and present conditions, influencing service lives, in my opinion they should be changed in the manner I have recommended. Several years from now, after review of pertinent data available at that time, it might well be that further modification of service lives, either longer or shorter, might be necessary. The service lives which I have discussed are those which I believe to be the minimum that should be used in determining annual depreciation reserve accruals upon the straight-line basis (T. 1733).

[fol. 1465]

RESPONDENT'S EXHIBIT No. 127

Statement Showing an Analysis of Investment and Annual Depreciation Accruals

Outside Real Estate

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Balance as of Jan. 1	Buildings Frame	Buildings Brick	Buildings Concrete	Paving Brick	Paving Concrete	Sewers and Plumbing	Water and Steam Lines	Electrical and Machinery	Concrete Troughs	Live Stock Scales	Total
1922..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1923..	$169,787.25	$570,110.83	$7,580.37	$3,214.50	$11,235.02	$27,647.40	$51,903.81	$32,636.05	$343.90	.....	$874,459.13
1924..	168,352.25	570,301.63	7,580.37	3,214.50	11,235.02	28,085.10	51,903.81	32,636.05	343.90	.....	873,652.63
1925..	168,853.38	574,891.81	7,580.37	3,214.50	11,235.02	28,076.81	52,443.00	32,636.05	343.90	.....	879,274.84
1926..	168,853.38	573,443.11	7,580.37	3,214.50	11,235.02	28,076.81	59,825.60	32,636.05	343.90	.....	885,208.74
1927..	168,853.38	573,718.11	7,580.37	3,214.50	11,235.02	28,076.81	59,825.60	32,636.05	343.90	.....	885,483.74
1928..	135,789.68	573,814.11	7,580.37	3,214.50	11,235.02	28,076.81	59,825.60	32,636.05	343.90	.....	852,516.04
1929..	135,789.68	573,814.11	7,580.37	3,214.50	11,235.02	28,076.81	56,587.60	32,636.05	343.90	.....	849,278.04
1930..	104,129.62	572,182.63	7,580.37	3,214.50	11,235.02	28,248.36	56,587.60	32,636.05	343.90	.....	816,158.05
1931..	115,950.54	588,396.21	7,580.37	3,559.50	11,235.02	28,883.36	56,587.60	38,308.13	433.90	$1,019.24	851,953.87
1932..	116,011.44	588,396.21	7,580.37	3,245.99	11,548.53	28,883.36	56,587.60	38,283.13	433.90	1,019.24	851,989.77
	Annual Depreciation Rate										
	4%	2%	2%	4%	3%	1.5%	1.25%	6%	5%	8%	
	Accrual										
1923..	6,791.49	11,402.22	151.61	128.58	337.05	414.71	648.80	1,958.16	17.20	.00	21,849.82
1924..	6,734.09	11,406.03	151.61	128.58	337.05	421.28	648.80	1,958.16	17.20	.00	21,802.80
1925..	6,754.14	11,497.84	151.61	128.58	337.05	421.15	655.54	1,958.16	17.20	.00	21,921.27
1926..	6,754.14	11,468.86	151.61	128.58	337.05	421.15	747.82	1,958.16	17.20	.00	21,984.57
1927..	6,754.14	11,474.36	151.61	128.58	337.05	421.15	747.82	1,958.16	17.20	.00	21,990.07
1928..	5,431.59	11,476.28	151.61	128.58	337.05	421.15	747.82	1,958.16	17.20	.00	20,669.44
1929..	5,431.59	11,476.28	151.61	128.58	337.05	421.15	707.35	1,958.16	17.20	.00	20,628.97
1930..	4,165.18	11,443.65	151.61	128.58	337.05	423.73	707.35	1,958.16	17.20	.00	19,332.51
1931..	4,638.02	11,767.92	151.61	142.38	337.05	433.25	707.35	2,298.49	21.70	81.54	20,579.31
1932..	4,640.46	11,767.92	151.61	129.84	346.46	433.25	707.35	2,296.99	21.70	81.54	20,577.12

[fol. 1466]

Sheet 2

Statement Showing an Analysis of Investment and Annual Depreciation Accruals

Equipment Investment

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Balance as of Jan. 1	Auto-mobiles	Exchange	Office Furniture and Fixtures	Fire	Horses, Wagons and Harness	Harness	Yard	Hotel	Horse	Total
1922										
1923	$524.19	$23,661.63	$8,789.51	$4,191.76	$8,557.50	$2,874.31	$8,740.69	$16,281.95	$1,832.75	$75,454.29
1924	1,963.61	24,001.19	9,105.74	4,229.98	8,222.50	2,928.42	9,165.42	16,281.95	1,832.75	77,731.56
1925	2,490.75	24,038.25	9,209.53	4,843.99	7,922.50	3,093.81	10,124.67	15,360.73	1,832.75	78,916.98
1926	2,965.95	26,094.65	9,249.70	4,856.99	8,528.75	3,126.05	10,701.77	15,800.14	1,832.75	83,156.75
1927	3,190.06	26,094.65	9,461.59	4,856.99	8,043.75	3,117.55	10,853.11	18,787.99	1,832.75	86,238.44
1928	3,374.71	26,214.41	9,629.78	4,879.49	16,759.61	3,080.05	11,014.61	18,787.99	895.75	94,363.40
1929	3,316.90	26,209.41	9,939.95	4,879.49	17,447.11	916.60	11,095.89	20,130.99	885.75	94,822.09
1930	3,092.55	26,906.57	10,037.96	4,869.49	17,186.37	916.60	11,391.42	21,288.83	885.75	96,575.54
1931	3,105.04	26,916.57	10,077.16	4,966.73	17,248.87	916.60	11,415.02	22,165.98	421.00	97,232.97
1932	4,936.74	26,916.57	10,043.76	6,932.05	17,173.87	635.75	11,426.62	22,175.78	421.00	100,662.14
					Annual Depreciation Rate					
	33⅓%	2½%	10%	6%	15%	15%	12½%	10%	12½%	
					Accrual					
1923	174.73	591.54	878.95	251.51	1,283.63	431.15	1,092.59	1,628.20	229.09	6,561.39
1924	654.54	600.03	910.57	253.80	1,253.38	439.26	1,145.68	1,628.20	229.09	7,094.55
1925	830.25	600.96	920.95	290.64	1,188.38	464.07	1,265.58	1,536.07	229.09	7,325.99
1926	988.65	652.37	924.97	291.42	1,279.31	468.91	1,337.72	1,580.01	229.09	7,752.45
1927	1,063.35	652.37	946.16	291.42	1,206.56	467.63	1,356.64	1,878.80	229.09	8,092.02
1928	1,124.90	655.36	962.98	292.77	2,513.94	462.01	1,376.83	1,878.80	111.97	9,379.56
1929	1,105.63	655.24	994.00	292.77	2,617.07	137.49	1,386.99	2,013.10	110.72	9,313.01
1930	1,030.85	672.66	1,003.80	292.17	2,577.96	137.49	1,423.93	2,128.88	110.72	9,378.46
1931	1,035.01	672.91	1,007.72	298.00	2,587.33	137.49	1,426.88	2,216.60	52.63	9,434.57
1932	1,645.58	672.91	1,004.38	415.92	2,576.08	95.36	1,428.33	2,217.58	52.63	10,108.77

[fol. 1467]

Sheet 3

Statement Showing an Analysis of Investment and Annual Depreciation Accruals

Stock Yards Buildings and Improvements

(1) Balance as of Jan. 1	(2) Buildings Frame	(3) Buildings Brick	(4) Buildings Concrete	(5) Plumbing and Sewers	(6) Water Lines	(7) Steam Lines	(8) Wooden Tanks	(9) Concrete Tanks
1922								
1923	$598,499.32	$113,345.75	$28,100.83	$191,376.76	$84,548.24	$50.00	$13,025.91	$26,613.01
1924	598,610.59	113,345.75	28,100.83	191,376.76	84,548.24	50.00	13,025.91	26,613.01
1925	599,175.06	113,345.75	28,100.83	191,376.76	84,629.94	50.00	13,025.91	26,613.01
1926	599,175.06	113,345.75	28,100.83	191,376.76	84,629.94	50.00	13,025.91	26,613.01
1927	605,460.12	114,845.75	28,100.83	191,586.76	84,999.94	50.00	13,025.91	26,613.01
1928	605,094.88	114,845.75	28,100.83	191,586.76	84,999.94	50.00	13,025.91	26,613.01
1929	621,362.00	115,995.75	28,449.58	194,744.99	85,437.07	634.24	11,725.91	26,613.01
1930	620,645.35	116,012.75	28,449.58	194,881.21	85,437.07	634.24	11,725.91	26,613.01
1931	621,874.97	117,199.60	28,449.58	195,158.86	85,567.83	634.24	11,725.91	26,613.01
1932	622,659.79	117,199.60	28,449.58	195,158.86	85,567.83	634.24	11,725.91	26,613.01
Annual Depreciation Rate	5%	2%	2%	1.5%	1.25%	2%	5%	3%
Accrual								
1923	29,924.97	2,266.92	562.02	2,870.65	1,056.85	1.00	651.30	798.39
1924	29,930.53	2,266.92	562.02	2,870.65	1,056.85	1.00	651.30	798.39
1925	29,958.75	2,266.92	562.02	2,870.65	1,057.87	1.00	651.30	798.39
1926	29,958.75	2,266.92	562.02	2,870.65	1,057.87	1.00	651.30	798.39
1927	30,273.01	2,296.92	562.02	2,873.80	1,062.50	1.00	651.30	798.39
1928	30,254.74	2,296.92	562.02	2,873.80	1,062.50	1.00	651.30	798.39
1929	31,068.10	2,319.92	568.99	2,921.17	1,067.96	12.68	586.30	798.39
1930	31,032.27	2,320.26	568.99	2,923.22	1,067.96	12.68	586.30	798.39
1931	31,093.75	2,343.99	568.99	2,927.38	1,069.60	12.68	586.30	798.39
1932	31,132.99	2,343.99	568.99	2,927.38	1,069.60	12.68	586.30	798.39

Sheet 4

Statement Showing an Analysis of Investment and Annual Depreciation Accruals

Stock Yards Buildings and Improvements—Continued

(1) Balance as of Jan. 1	(2) Machinery and Electrical	(3) Concrete Troughs	(4) Live Stock Scales	(5) Paving Brick	(6) Paving Concrete	(7) Paving Asphalt Concrete	(8) Paving Asphaltic	(9) Total
1922	.....	.....	.....	.....	.....	.....	.....	.....
1923	$16,858.67	$27,453.88	$21,589.46	$455,337.90	$163,099.10	$5,770.34	$5,888.20	$1,745,787.43
1924	17,758.67	27,453.88	21,614.46	455,337.90	163,099.10	5,770.34	5,888.20	1,752,594.04
1925	17,713.67	27,453.88	21,614.46	455,337.90	163,099.10	5,770.34	5,888.20	1,753,195.21
1926	18,020.90	27,453.88	21,891.69	455,337.90	163,099.10	5,770.34	5,888.20	1,753,779.67
1927	18,020.90	27,453.88	21,891.69	456,392.90	166,469.17	5,770.34	5,888.20	1,766,569.80
1928	18,020.90	27,453.88	21,992.24	456,392.90	166,469.17	5,770.34	5,888.20	1,766,305.11
1929	18,070.90	28,453.88	22,762.24	456,392.90	172,354.71	5,770.34	5,888.20	1,794,656.12
1930	18,478.93	28,453.88	22,869.21	445,547.29	184,449.75	5,770.34	5,888.20	1,795,856.72
1931	21,732.03	28,453.88	22,869.21	445,547.29	186,001.38	5,770.34	5,888.20	1,803,486.33
1932	21,732.03	28,453.88	22,869.21	445,547.29	186,282.55	5,770.34	5,888.20	1,804,552.32
Annual Depreciation Rate	6%	5%	8%	4%	3%	4%	8%	
Accrual								
1923	1,011.52	1,372.69	1,727.16	18,213.52	4,892.97	.....	471.06	65,821.02
1924	1,065.52	1,372.69	1,729.16	18,213.52	4,892.97	230.81	471.06	66,1[illegible].39
1925	1,062.82	1,372.69	1,729.16	18,213.52	4,892.97	230.81	471.06	66,139.93
1926	1,081.25	1,372.69	1,751.34	18,213.52	4,892.97	230.81	471.06	66,180.54
1927	1,081.25	1,372.69	1,751.34	18,255.72	4,994.08	230.81	471.06	66,675.89
1928	1,081.25	1,372.69	1,759.38	18,255.72	4,994.08	230.81	471.06	66,665.66
1929	1,084.25	1,422.69	1,820.98	18,255.72	5,170.64	230.81	471.06	67,799.66
1930	1,108.74	1,422.69	1,829.54	17,821.89	5,533.49	230.81	471.06	67,728.29
1931	1,303.92	1,422.69	1,829.54	17,821.89	5,580.04	230.81	471.06	68,061.03
1932	1,303.92	1,422.69	1,829.54	17,821.89	5,588.48	230.81	471.06	68,112.48

[fol. 1469] In Respondent's Exhibit No. 127, which consists of 4 sheets, I have classified the property in accordance with the company's investments. I have grouped the property in accordance with my determination of the various items which will carry the average service life. I have shown as of January 1, by each of the years, the balance of the company's investment account for such items as frame buildings, brick buildings, paving sewers, and so forth. For each similar group of items I have found fixed depreciation rates based upon probable service lives, taking into account the company's record of retirement, renewals, replacements, repairs, and my inspection of the property at the present time. These depreciation rates, to my mind, represent the sums necessary to meet all normal replacements to adequately provide for obsolescence and inadequacy, and at all times keep the company's investment unimpaired. I realize that these rates of depreciation differ from those actually used by the company, so that in so far as they concern the period prior to 1932, they are given here for the purpose of computation only and represent no recommendation for a restatement of the company's accounts. The original rates used were but approximations and were the best estimates that could be made at the time they were adopted. All good accounting practice recognizes that depreciation rates are subject to correction from time to time as data is developed. The last 10 lines at the bottom of each sheet of this exhibit represent the annual depreciation accruals for each group of items of property, and the last column shows the total accrual for the year. These figures may be compared with the actual accruals made by (T. 1734) the company as shown on Respondent's Exhibit No. 116, and it will be noted, especially with respect to stockyard buildings and [fol. 1470] improvements, that I am showing by my method less depreciation than was actually taken by the company. This is due to the fact that whereas the company averages a 4.83 per cent annual accrual in 1931, my estimate is 3.77 per cent. In tracing it back further, it will be found that for frame and brick buildings, sewers and paving, which are the largest items in the account, I am using approximately 1 per cent less than the original company set up. This is due to the fact that I believe the service

life of the property, which has now reached what may be termed the turn-over stage, in part at least, is somewhat longer than that originally adopted.

Based upon the inspections I have made, my experience, and other data to which I have referred, I believe $100,000 is the proper annual amount to be set up for depreciation reserve upon the straight-line basis upon respondent's property as of the year 1932, it being the total of the various accruals shown on Respondent's Exhibit No. 127. That is my recommendation under existing conditions, and I think the sum is a fair, reasonable amount to charge annually to the depreciation accounts (T. 1735). Anything less than that would be, in my opinion, involving a great risk as to future requirements. It may not be next year or the next five, but at some time the accrual would fall short of the requirements necessary to meet retirements and replacements as made.

Group Accounting

There is another practice which I believe should receive consideration, but it departs somewhat from that previously adopted by the respondent company, and that is the practice of group accounting. Under this method any property retired which has been a component part of the group upon which depreciation accruals have been made, may be accounted for at the time of retirement for [fol. 1471] this entire investment cost by charging it to that portion of the total reserve which covers the group to which it belongs. This, of course, is providing that the particular group has accrued a reserve sufficiently high to accommodate the retirement of that particular unit. This practice is not followed by the St. Joseph Stock Yards Company, as is clearly illustrated by Respondent's Exhibit No. 122. However, it will be noted that only the portion of the investment cost of retired items of property have been accrued at the date of retirement. The practice of the St. Joseph Stock Yards Company has been to extinguish in its depreciation reserve only that portion of the investment in the particular property retired which has been accrued up to the date of retirement (T. 1736). Any balance or difference has been a charge to the surplus account. Theoretically, at least, the depreciation reserve and

surplus are both liabilities, so that a deduction might be made from either, and it has appeared to me that it is to the interest of both the public and the company to clear all retirement out of the depreciation reserve. From any standpoint, the depreciation reserve should be used wherever possible under good accounting practice, and since this practice has been generally approved by the Interstate Commerce Commission and various State commissions, I would recommend that it be done in this case. The practice I have just described as group accounting for depreciation has been approved by the Interstate Commerce Commission in its order in Docket 15100, reported in 177 I. C. C. 351, 445 (T. 1737).

The data for Respondent's Exhibit No. 128 has been taken from Respondent's Exhibit No. 127 and from the company's records relating to salvage and insurance. In those cases where the retirements have been partly offset by salvage or insurance, I have made proper adjust-
[fol. 1472] ments. The exhibit is largely self-explanatory and shows the gradual increase in the balance for depreciation from 1923 to 1931. The debit items relate to retirements and are adjusted for salvage and insurance by the credit item and the balance at the end of the year, which is carried forward as the first credit at the beginning of the next year. The annual depreciation accrual credit is taken from Respondent's Exhibit No. 127.

In order that a fair service life may be ascertained, the assumption is always made that adequate repairs, replacements, and renewals will take place as needed. A property is frequently in 100 per cent operating condition when individual units of that property are at a point which require immediate renewal. As soon as such replacement has been made, the property is still capable of rendering 100 per cent operating efficiency, but its physical condition has been materially increased by the restorative repairs which have taken place. As previously explained in my testimony, the labor in connection with these repairs is at a much higher cost than the labor incurred for the same property at the time of its original installation. It is (T. 1738), therefore, entirely improper to account for replacements made under a repair program on the basis of retired and replaced accounting, but it would only be a question of time under this method before the original investment would be

greatly exceeded, due to the fact that the labor for the additions would greatly exceed the labor for the investment. In a property such as the St. Joseph Stock Yards, however, the cost of materials entering into a construction will remain comparatively constant except during times of extreme inflation or deflation of prices. The cost of materials entering into repairs, including a number of miscellaneous costs, were included in Respondent's Exhibit No. 118. And the per cent which the cost of material bears [fol. 1473] to the total cost, in accordance with the inventory, was shown in Respondent's Exhibit No. 117. Using these two factors, it is possible to state with reasonable accuracy the total cost of replacement and repair materials on the investment cost basis, instead of actual maintenance cost basis now recorded.

In Respondent's Exhibit No. 129 (T. 1739), I have taken the principal accounting subdivisions and have indicated the cost of materials used in restorative repairs and have added an estimate of the cost of investment labor to these materials. The purpose of this exhibit is to give a guide to the sum which, in my opinion, it might be necessary to add to the annual net depreciation accrual. As an operating expense, this represents an average cost to maintain the property up to a uniform degree of operating efficiency. In other words, this average charge is an operating expense which must be provided for repairs, in addition to the normal depreciation accrual. In so far as the total cost of repairs, including all labor, exceeds this sum, there would be no change in the normal accounting. However, if any year the total cost of repairs was equal or less than this average material accrual, there should be an additional sum added to the depreciation reserve in that year, so that for the future, operating expenses may be maintained normally. Any sums added to the depreciation reserve under this method are, of course, subject to accounting withdrawals in years when the material repairs exceed the average. We, thus, get a total fair depreciation accrual for each year by adding the sums shown on Respondent's Exhibit Nos. 128 and 129.

Comments on Testimony of Government Accountant

I have read the testimony of John J. Bachmann and examined Government Exhibit No. 124 (T. 1740). I cannot

[fol. 1474] agree with many of the statements respecting the theory of depreciation and the general conclusions reached by the witness relating to the amount of depreciation to be allowed the St. Joseph Stock Yards Company. The first point to which I wish to call attention is the apparent overlapping of depreciation with what may be termed "repairs and replacements." There need be no confusion on this matter, and if we have in mind a clear conception of depreciation, we know it must relate only to the physical property in place. The replacement, then, is a substitution of new material for the old material which was new at the date of investment. In illustration of this point, I may quote from pages 41 and 42 of Professor Earl A. Salier's work on depreciation, which expresses my views on the matter: "The distinction between depreciation and maintenance should be drawn still more emphatically. Maintenance secures daily efficiency but does not, in any scientific manner, prevent the impairment of total investment. This is the function of depreciation allowances which must be based upon a comprehensive plan. Maintenance is necessarily haphazard in so far as continuity is concerned; moreover, its cost is not uniform and ordinarily increases with advancing age of the asset (Hayes, H. V., Public Utility, 1, p. 163). The best maintenance does not prevent the existence of a condition of normal deterioration, nor does it make (T. 1741) any provision for the resulting financial effect on invested capital. In San Joaquin and Kings County Canal Company v. Stanislaus County, 191 Federal 875, September 18, 1911, the court separated current repairs from depreciation and required a separate provision for the latter.

"The report of the Massachusetts Highway Commission on the appraisal of the New England Telephone and Telegraph Company (March 27, 1909, in 17th Annual Report, [fol. 1475] Massachusetts Highway Commission, 1909, pages 211, 215) maintained that total cost of reconstruction can be met adequately only by averaging costs from year to year, since current repairs are inadequate to offset loss, resulting from wear and tear, obsolescence, legal regulations, and casualties. Taking into consideration 'first cost, rate of depreciation, probable effect of rate of changes in the art, and the acts of municipal bodies, special misfortunes caused by the elements,' and also considering any

salvage that might result, the appraisers concluded that 7.3 per cent of the value of the property, exclusive of land, general supplies, and working capital, should be charged yearly against income. In the Pioneer Telegraph Company v. Westenhaver (118 Pacific 354, January 10, 1911) the Supreme Court of Oklahoma stating that current maintenance 'represents only the cost of those units that had become so badly depreciated that they had to be replaced during that year,' found that 7 per cent of reproductive value of physical property would be a proper annual depreciation allowance.''

It was to emphasize this very point that I prepared Respondent's Exhibit Nos. 117, 118, and 119 to show the discrepancy between the restoration of material in new condition and the original investment cost of that same material (T. 1742). It will also be noted from Respondent's Exhibit No. 129 that whereas material in the inventory represented 69 per cent of the total cost, the material used in repairs averaged much less than 60 per cent of the total cost of repairs. For this reason it is improper to use the entire cost of repairs in the sense that they are replacements of material in kind.

As explained elsewhere in my testimony, it is perfectly proper to set up annual accruals for replacements of material ordinarily classified as repairs, but such an allowance [fol. 1476] is an addition to the normal depreciation accrual which provides for the ultimate retirement of the property, either at the expiration of the assumed service life or before that period, due to obsolescence or accident, or following that period, due to an extension of service life, brought about by adequate renewal. At this time, also, it might be well to mention the distinction between the depreciation accrual for a composite property consisting of many units with differing service lives and a single item of property, such as a machine or an individual building. Service lives, in the first instanee, are assumed on the basis of an average of a number of different things, and there will be a retirement of a portion of the units making up the composite whole before the expiration of the average service life assumed. Another portion of the property may be retired at exactly the average service life, but a part of it will actually exceed the average service life. This (T.

1743) controls the composite condition per cent, and it also warrants the changing of average service lives, due to the experience gained from retirements and the knowledge of the new materials used in replacements. It is also apparent that so long as retirements take place, in a composite property, the reserve will never reach 100 per cent, if computed on correct service lives (T. 1744).

What I show in Respondent's Exhibit No. 130 was taken from Government Exhibit No. 114, it being that portion where Mr. Henrici set up the depreciation and composite service life for the different sections of the property. This same data is shown on pages 12 and 13 of Government Exhibit No. 124. The left-hand vertical scale on this diagram represents the per cent of remaining service life of the 1932 reproduction cost found by Mr. Henrici, after retirements and additions have been made as indicated by the service lives, and on the right-hand vertical scale it [fol. 1477] shows the per cent which the accumulated depreciation reserve on the straight-line basis would bear to the total cost. In other words, I have assumed in making this exhibit that I would start with the property in 100 per cent condition, and having the service lives indicated, would retire and restore the property at the expiration of the assumed service lives. The fluctuations in the diagram then indicate the effect of these retirements and replacements which occurred at the (T. 1745) stated service life. It will be noted from the data that the shortest service life for any of the property is 15 years, and the next is 50 years, the composite being 24.8 years. If this was a single unit of property having a total service life of 24.8 years, the line on the diagram would extend from 100 per cent in the first year to zero per cent at 24.8 years, and would then jump to 100 per cent in the next year. Since the property consists of a large number of units, however, having various service lives, the line showing the per cent of the investment remaining will never reach zero. This, Respondent's Exhibit No. 130 illustrate graphically. It will be noted that there is a minimum point reached at the expiration of the 40th year. At that date of retirement there is but 15 per cent of the life of the property remaining which was in existence in the first year. The reserve had accumulated to 85 per cent of the investment, neglecting, of course, salvage or insurance. This diagram further illus-

trates what would take place if each of the individual units was retired in its entirety at the completion of its service life. Of course, this very seldom represents the history in the case of a composite property. For instance, sewers or water lines would be retired and replaced piecemeal, and in a growing property there would be a great deal of up-
[fol. 1478] turn in the diagram due to the installation of the property at 100 per cent condition (T. 1746).

I noted Mr. Bachmann's statement on page 593 of the transcript that it is unnecessary to determine exactly what constitutes repairs and what constitutes replacements. I think he is wrong in this decision, due to the labor item on repairs and replacements of which I have spoken. It is true that all expenses, including depreciation, come under the general heading of maintenance, but in so far as the reserve is concerned, it should only be drawn upon for actual retirements and replacements at the normal cost of installation. The investment accounting for retirements must be upon the basis of the original investment, or any subsequent adjustment due to reappraisal. It is not clear to me just what the witness means, when he divided depreciation into two parts, as described on pages 595 and 596 of the record, since he enumerates the principal causes of depreciation and includes that form in his first division. The only cause omitted that I can recall is that due to accidents, such as fire, tornado, or flood. The second part of the question of depreciation mentioned by the witness only refers to an implication that the management of the company has accrued a reserve for some other purpose than to protect the investment and keep it intact and unimpaired. The witness's description on page 596 of the record of how depreciation can be determined apparently confuses the depreciation ascertained for valuation purposes with that which must be taken care of there as an accounting proposition (T. 1747). An engineer can determine the condition of property by inspection but the accountant may properly include in his record depreciation accruals which bear no direct relation to the exact physical condition as observed on a particular date. The accountant may deter-
[fol. 1479] mine expired service life from his records of past experience with respect to retirements of individual units, but this bears no direct relation to the existing condition of the composite of those units of property at a particular

date when such condition is predicated upon an inspection. The expiration of the service life of the units is an accounting matter only. A large part of the discussion on page 597 of the record is superfluous for the reason that the witness again confused the condition for valuation purposes with the accounting necessary to determine the depreciation reserve. The inspections made by the various engineers and the determination of condition at each date could give no consideration to the retirements of property due to such factors as obsolescence and inadequacy any time subsequent to the date of inspection. Neither could such an inspection relate directly the property's future service life from an accounting standpoint and the existing physical condition at date of inspection from an engineering standpoint. It is absolutely improper to say that, because in these determinations of condition the average depreciation was only $2,000 to $3,000 per year from an accounting standpoint. No consideration was given to fluctuating price levels or to additions and betterments in the property (T. 1748).

Respondent's Exhibit No. 130 shows very clearly the condition per cent raised or lowered, depending upon the installation of new property, and it may be that the observed condition at the time of inspection was influenced entirely by the installation of some replacement which brought a portion of the property up to 100 per cent condition. However, it might well be that on any succeeding dates there would be this increase in condition, so it would give no measure at all of expired service life condition to note the physical condition on two different dates and then [fol. 1480] relate the difference. It is perfectly possible that the repairs would greatly influence the condition at the particular date of inspection. However, depreciation, from an accounting standpoint, has been continually going forward. From an accounting standpoint, provision must be made for the unexpired service life, and the straight line basis provides a method which is less apt to result in inequitable results (T. 1749).

Referring to paragraph 106 of the Secretary's decision upon the first hearing in this proceeding and to the portion thereof in which the Secretary points out the small difference between condition per cent of the property in different years under different appraisals, as indicating that much

of the property can be given an indefinite life by current repairs and that the annual accruals for depreciation, which might otherwise be proper, may be reduced, I have this comment to make. In my opinion, the condition per cent determined for valuation as of particular date, only relates to the valuation as of another date and can have no bearing on service lives for accounting purposes, since the determination of condition per cent by inspection is dependent upon so many different factors. This is clearly illustrated by referring to Government Exhibit No. 114, where Mr. Henrici shows condition per cent determined by 5 different inspectors employed by him. The exhibit shows a variation as high as 25 per cent in a single case and 20 per cent in a number of other cases, between the determinations of these different inspectors. The impropriety of using this method may perhaps best be illustrated by referring to Respondent's Exhibit No. 130. It will be seen that, for the first 15 years, the difference in condition per cent would normally represent the measure of the depreciation, but, after that period, due to the replacement [fols. 1481 & 1482] of (T. 1750) property retired, there is a constant fluctuation in condition per cent, and the great difference as indicated in the 40th and 80th years, due to replacements, would indicate the fallacy of determining service lives by any comparison of condition per cent. It will be noted that there is a variation of over 60 per cent at the time these major replacements took place. Another factor which is illustrated by this exhibit is the possibility of obtaining the same condition per cent in different years. According to this diagram, this property might be in the same condition per cent in the 10th, 16th, 21st, 41st, 52d, 61st, 63d, 81st, 86th, 91st, and 94th years. It may be noted that under appraisals made in different years, there might be appreciation in condition per cent due to the introduction of new property through replacement. This situation would not obviate, but on the contrary, would emphasize the necessity of placing the proper amount in the reserve each year.

On the service life theory, if I followed strictly the service lives determined by Mr. Henrici and they turned out to be accurate, as shown on Respondent's Exhibit No. 130, I would find the condition per cent the same in the 10th year and in the 94th year (T. 1751). According to the

theory followed by the Secretary, if the property was inspected in the 10th and 94th year and the condition found to be the same theoretically, there would be no depreciation over that entire period. It would be necessary, of course, to have a depreciation reserve to take care of that term. If we merely took the test stated by the Secretary in paragraph 106 of his former decision, we would theoretically have no depreciation at all in a period of 84 years. That situation would keep on recurring ad infinitum, if the property existed (T. 1752).

[fol. 1483] I have examined the testimony of Mr. Bachmann in connection with his discussion of retirements on pages 598 and 599 of the record and in connection therewith desire to refer to Respondent's Exhibit Nos. 116, 122 and 123. These exhibits show that from 1922 to 1931 the retirement total was $182,666, or 6.6 per cent of the investment in the property. It will be noted also that of the property in existence in 1922, only 93.22 of the same property was still in existence in 1931. We know, from the inventory, that a great deal of this property has not yet reached its ultimate service life, and I am referring to such property as the Exchange Building, pavement, sewers and water lines. Whenever any of this property is retired, we may expect these retirements to increase from the average rate of 7/10 per cent during the past 10 years to possibly as high as 5 or 6 per cent. Theoretically, we may then expect a falling-off until about twice the average service life of the entire property is reached. That has been the history of all statistics where it has been possible to keep an accurate record of retirements of a composite property. It is the form assumed by mortality tables, used by life insurance companies, and is the indicated law followed by numerous tests made by railroads and Governmental agencies during the retirement of such property as locomotives, freight cars, cross ties and similar items. For this reason, the figures of $7,000 to $10,000 referred to by the witness on page 599 of the record have no significance as to the (T. 1753) probable retirements in the future. Certainly his statement, "The provision for depreciation should be kept in line with the actual depreciation that is being suffered * * *," bears no relation to the adequate accounting depreciation accrual which should provide for an equaliza-

tion of future retirements. The actual average expiration of service life is not provided for by this retirement [fol. 1484] method. To relate annual depreciation allowance to actual retirements would, upon the basis of the Government engineer's life tables, require a detailed study of at least twice the greatest estimated service life, that is, it would have to extend over a period at least that long in order to represent anything reliable. On the basis of Mr. Henrici's study it would be around 100 years to produce the service life. It is not clear whether it is the witness' purpose to eliminate from the total retirements those which were due to fire. Accident has always been recognized as one of the causes of depreciation and should be provided for in any accounting accrual. It can never be foreseen but statistics show that accidents of some nature generally occur at irregular intervals throughout the life of a large composite property. These can best be provided for through the straight line method of depreciation, since it is possible that the greatest accidents in the history of the company may occur during the early life of (T. 1754) the units of property. Coming now to the statement on page 602 of the record, where the witness points out the discrepancy between the service life determined by Mr. Henrici and the actual experience of the company, it is apparent that the witness again has lost track of the necessity of equalizing retirement in later years. As shown by Respondent's Exhibit No. 122, the actual depreciation accruing on property retired represented cumulatively from 1922 to 1931 only 57 per cent of the actual asset value of these retirements. This factor itself indicates that the service life basis, now adopted by the company, has not yet reached the stage where it fully compensates the investor for the retirement of his property. The rate payers of today are not paying their proportion of the cost of property consumed in service. The witness states on page 603: "The [fol. 1485] straight line method of making provision for the actual depreciation is out of the question. It is far in excess of what the company needs to maintain its plant when we consider the retirements and the replacements and repair policy of the company." In my opinion, the witness has confused the method with the results produced by the application of service life rates. It seems

to me that the straight line method should be adopted in any circumstances for the composite property, but in the case of the St. Joseph Stock Yards, as I have shown by another exhibit, the service lives used in the past should be somewhat extended so that slightly lower rates of depreciation can be applied. This is the only way that future retirements can be fully protected (T. 1755). If under the straight line method we find that too great an amount was being accrued it would be simply a question of extending the service lives to conform with experience. I brought that out, I think, once before, that the experience that is gained from the operation of a property over a period of years warrants adjustments to service lives, but, in my opinion, does not warrant a change of method. I cannot imagine any circumstances in respect to this or any similar property where the straight line method would be out of the question. I don't think it is a question of method at all. Again on the same page Mr. Bachmann refers to the specific experience of the company, but, as pointed out previously, this experience is only the beginning of a much longer turnover period. It will be some time before the replacements can be said to be uniform, and, even then, there will be quite large fluctuations in the different years. That again is clearly illustrated by Respondent's Exhibit No. 130. The violence of the fluctuations, due to retirements at the expiration of various service lives, produces these fluctuations in condition. On pages 603 and 604, [fol. 1486] the witness discusses the depreciation accruals (T. 1756) on the stockyard pens, fences, runways, and so forth. As shown by Respondent's Exhibit No. 123, the actual retirements for this class of property over the past 10 years have been only 3 per cent of the investment. Also, as shown by Respondent's Exhibit No. 119, the material used in repairs for this class of property has averaged only one-half of one per cent of the material in the inventory. In other words, the one-half of one per cent renewal material has kept the property up to 100 per cent operating efficiency. However, there has been going on an actual expiration of total service life (T. 1757). The company, in its accounting for depreciation, assumed six per cent per annum was proper for nearly all the frame structures such as pens, and so forth. At the same time, they assumed five

per cent for the brick paving and varying per cents for the remaining property. In Government Exhibit No. 114, Mr. Henrici assumed 6.7 per cent for a large portion of this property. In Respondent's Exhibit No. 127, however, I have recognized the fact that a great deal of the property should have an extended service life. I have used five per cent on the buildings, and four per cent on paving. Evidently the factors I have just mentioned were not considered by witness Bachmann. Considering next the Exchange Building discussed on page 604 of the record, the witness has apparently confused the total service life assumed with the age of the property. It is true that this building was constructed in 1898, but it is also true that in so far as this company's depreciation is concerned, the accrual began in 1915 and until 1922 represented less than two per cent per annum on the value of the building. Since 1922, the depreciation has been accrued at the rate of three per cent per annum. On Respondent's Exhibit No. 127, I have recognized the ex- [fol. 1487] tended life of this structure and I am using two per cent per annum. I wish to point out, however, that even if the company's basis is continued for another period of years, it will be sometime in the 1950's before the full investment cost of the building is accrued in the reserve, and no one can be sure that this building will be in existence that long (T. 1758). In the meantime, there is the liability of obsolescence due to fire, tornado, flood or other accident, which is not provided against. As shown by Respondent's Exhibit No. 118, the materials and miscellaneous expenses, exclusive of labor, applicable to this building have averaged less than two thousand dollars per year, which is much less than one per cent of its investment cost. I cannot agree that there has been any error in the straight line method of depreciation adopted for this building, although it is probable that from now on the rate of annual accrual should be reduced. Although the physical condition per cent of the building has not materially changed, there has been a gradual loss in service life which must be provided for. The same is true, of course, with respect to sewer mains, water mains, which ultimately must be replaced, since no item of property of a similar nature has ever been known to have unlimited life. If respondent

found it necessary to change its wooden hog pens to concrete pens that change, of course, is one of those due to obsolescence, which must be provided for in any reserve that is set up and assuming that change was made in any period near the present time, the straight line method would more nearly approach the reserve needed than any other method. There is one other factor in connection with the Exchange Building. It is my understanding that there was a recommendation by witness Christensen in this case for elimination from the (T. 1759) rate base of two-thirds of that building. That would be a forced retire- [fol. 1488] ment of that amount from the company's rate base which should be provided for in some form through the depreciation reserve. I am assuming that the company cannot afford to retain and maintain property on which the Secretary refuses to permit a fair return. On this same page, 604 of the record, Mr. Bachmann again is confusing the condition per cent obtained for valuation purposes with the accounting accrual for depreciation, which should go ahead on a uniform basis throughout the entire service life of any property. It should not be expected that the two would ever exactly agree, for the reason that maintenance expenses relate entirely to the operating efficiency and must be kept up uniformly throughout the entire service life. They may possibly increase as the property approaches the end of its service life. On page 605 of the record, the witness makes a statement: "The straight line method, in my opinion, being out of the question for this particular purpose, there appears to be left only the sinking fund method or the method of actual retirements, plus the actual (T. 1760) accrual of depreciation as determined by observation." In my opinion, the latter method suggested is so unscientific as to merit no consideration from an accounting standpoint. The actual future retirements may be estimated with some degree of accuracy by considering mortality statistics, and it can be shown that as the property grows older, retirements will increase. Consequently, the greater the restoration of these retirements, the higher the observable condition will be immediately following such replacement. It might well be, therefore, that the "actual accrual of depreciation as determined by observation" will be a negative quantity, or appreciation, depending upon the date of observation.

It is perfectly possible that as between any two observations, the condition of certain of the property will in- [fol. 1489] crease, due to these replacements. This method, therefore, makes no provision for equalizing retirements or for anticipating the expiration of service life. It has been my observation that the straight line method is the method generally adopted by the larger industries and corporations of the country. I am very familiar with railroad accounting, of course, and in that exclusively straight line depreciation is used (T. 1761).

Large railroad systems have items of property which duplicate every item of property that you would find at the stockyards. They have office buildings, sewers, water mains and I can think of no item of property in the stockyards that is not included in the inventory of some railroad in the country, generally in a great many. I was going on to say about the corporation's use of straight line depreciation. I know that all of the larger companies such as U. S. Steel and the motor companies and large manufacturing companies all use the straight line method. I made a special inquiry of the Bureau of Internal Revenue just recently and was unable to find a record of any company which was using the sinking fund method. The general method used was the straight line method. The straight line method is not only permitted by the Bureau of Internal Revenue for the purpose of collecting income taxes from corporations but it is practically required (T. 1762). I do not know of anything so peculiar about the St. Joseph Stock Yards as to make inapplicable to it a method that is imposed by public authority or voluntarily adopted for practically every other property in the country. Continuing my comment on the retirement method, I feel it should be discarded as strictly unscientific and not in accord with good accounting practice. Mr. Bachmann takes up the discussion of a factor which, in my opinion, introduced the worst fallacy into his argument regarding depreciation and that [fol. 1490] is the use of the sinking fund method. The first statement made on page 605: "It does come closer to the facts that any method except the actual retirement method," is grossly in error because under neither the sinking fund nor any other method can we anticipate the future retirements exactly, and as was shown on Re-

spondent's Exhibit No. 125, the sinking fund method for a single item of property is always below the total required accrual at the time of retirement by a greater amount than the straight line method. Either method will produce the entire cost at the expiration of the service life, but during this intermediate period the straight line method is always more nearly accurate in case of a retirement before the end of the service life (T. 1763). The essential factor of the sinking fund method which it is necessary to assume is that all the contributions to the fund could be reinvested semi-annually and earn the estimated percentage without any loss during any period of time. In order to call it the sinking fund we have to assume that it will earn that money. It would be more correct to say that the sinking fund method is estimated to produce the same amount at the end of the service life. It is apparent, therefore, that for any single piece of property retired before the expiration of the service life, the sinking fund method would produce inadequate results. It is also equally true that for a composite property containing a large number of units, such as the St. Joseph Stock Yards, the necessary reserve for replacing the investment will never be reached so long as new property is being installed prior to the expiration of its estimated service life. Under the straight line method, as shown by Respondent's Exhibit No. 125, we come nearer meeting the requirements for retirements. The sinking fund method also assumes, as stated by the witness in this case, that the [fol. 1491] money will be invested semi-annually and secure a compound interest return. It is difficult to understand (T. 1764) how any assumption can be made as to the rate of return or the continuity of the investment which will be in any way accurate. And there will be a further reduction due to personal property and income taxes. It involves some further assumption to consider that twice each year the interest from this fund will be immediately reinvested the same day at the same rate of interest as the entire fund. In a composite property such as the St. Joseph Stock Yards, the constant withdrawals from the fund to meet retirements and replacements would involve such a complicated adjustment as to compound interest, that the whole thing would soon become fantastic and unworkable (T. 1765). If by way of illustration

we needed $656 to take care of a retirement and our funds were invested in $1000 bonds that would necessitate one of these complicated adjustments, because you would immediately cash your $1000 bond, and while you would receive the accrued interest on that bond at the time you cashed it, it would mean that you had a balance left over, being the difference between the cost of your replacement and the $1000, which would have to be invested in something that would bring in the necessary interest. It would have to be invested the same day as there could be no lapse at all.

Complexities of the Sinking Fund Method

Some of the complexities of this compound interest sinking fund basis have been pointed out in the report of a special committee of the entire subject of valuation of public utilities. This is found at page 1474 of Volume 81 of the Transactions of the American Society of Civil Engineers, [fol. 1492] December, 1917. I wish to quote from this report, which expresses my opinion on this subject in such a clear manner that I am prepared to adopt this statement as my own. Under the heading (T. 1766) "The Entries under the Sinking Fund Method," the committee reports as follows: "Operating Income, in the amount of the annuity, is charged to operating expense, in order to keep the operating income account correct. As fair return is based on the book value, there must be no deduction in this below original value, except as units are retired, so there will be no credit to depreciation reserve, which will reduce the book value, but, to some other liability account as trust fund reserve. Among the assets, cash or other assets will be credited and the sinking fund charged with the amount of the depreciation annuity. The fund will be credited only as cash is expended for replacement of or in lieu of units covered by the fund. The fund must be carried as an undistributable assets belonging to and going with the property to offset the trust fund reserve. Accounting must go on within the fund. Its cash must be invested and its income accounted for separately from the operating income. If its cash is reinvested in the property itself, purchasing new units and increasing the income-producing but depreciating property, the earnings from such new units should be charged to the fund.

These units being depreciating units must also earn depreciation annuities which must, in turn, be invested, and in effect a new sinking fund must be set up for each addition to depreciating property. It would be manifestly impossible to separate the earnings of the several units of a complex property, but the operating income can be separated into two parts, respectively, proportion to the investment from the fund, and that from other capital and its due share charged to the fund" (T. 1767). One point which is emphasized in the above is that there must [fol. 1493] be no depreciation in the rate base under the sinking fund method. This conclusion agrees with the finding of the Interstate Commerce Commission in Docket 15,100 as reported in 118 I. C. C. at page 355.

I have read the prior report of the Secretary in this case and know he used a depreciated rate base for rate making purposes. I also know that a depreciated rate base has again been offered in evidence by Mr. Henrici and by Mr. Kosters. There has been no suggestion in this case of anything but a depreciated rate base, as far as I know. As I shall point out later, that is an impossible situation, where you use the sinking fund method. "The sinking fund method, on the other hand, is based upon the theory that the company is entitled to a fair return upon all property maintained in condition for proper service, regardless of the fact that a part of its service life has been consumed and that the owner should receive no reimbursement for property consumption, until the unit has finally been retired. Funds reserved from earnings by the depreciation charges are, therefore, segregated and allowed to accumulate (T. 1768) at interest, pending such ultimate reimbursement. They cannot be used indiscriminately for corporate purposes, but must be used to produce definite and reasonably assured earnings. The difference in theory is well illustrated by the following passage from the brief filed in behalf of the Public Service Commission of Oregon, that Commission being one of the advocates of the sinking fund method 'manifestly the straight line method of calculating depreciation cannot properly be used in conjunction with an undepreciated rate base, nor should the sinking fund principle be followed where a depreciated rate base is considered. In other words, the public cannot equitably be required to pay for capital as it

is consumed, that is, on the straight line basis, and, at the same time, be required to pay a return upon such consumed [fol. 1494] capital, that is, on an undepreciated rate base, nor should a utility company be asked or required to forego its legitimate return upon the full undepreciated value of its property unless its capital is fully repaid as rapidly as it is consumed.' Granting the premises upon which they are based, both theories are logically sound. In our opinion, the premises which underlie the straight line method are, as we have indicated in an earlier part of this report, in accord with the principles which have been enunciated by the Supreme Court of the United States."

I agree fully with the testimony of Mr. James A. Councilor appearing on page 373 of the printed abstract reading as follows: "That is practically the doctrine (T. 1769) of the Interstate Commerce Commission in the case to which I have referred. The case of reproduction new and sinking fund must get together or depreciated rate base and straight line. You could not mix the two, one inherently involves the other. In my opinion, the use of the depreciated rate base plus the sinking fund method, proposed by the Government, in fact deprives the owner of a part of his property value during the entire life, assuming that the factors I have before me are correct." That statement is substantially the conclusion that I have stated in the last portion of my testimony. Continuing my quotation: "This method is also much simpler and easier to apply, nor are the practical results of the two methods very different, a fact which we have also noted and explained in the earlier discussion." In my opinion, when provisions for depreciation or retirements are made on the sinking fund basis, and the accumulated funds are invested in the property, it is necessary that this part of the total investment earn a return, as well as the property acquired in a different manner. If deductions are made for depreciation, the earnings of the retirement fund necessary for its ultimate ade- [fol. 1495] quacy would be lacking (T. 1770). Under such methods of accumulating sinking fund reserves, therefore, no deduction for depreciation should be made.

Assuming that the Secretary of the Court fixes the fair return at 6, 7, or 8 per cent and there is no place for respondent to use this money in its own business except in replacements of property, as such replacements are re-

quired, there would be no method by which the company would be earning the 5 per cent semi-annually to go to the accretion of the sinking fund. The annual allowance which would have to be credited to the sinking fund each six months in addition to the fair return of 6, 7, or 8 per cent would be an additional expense to the company. There is nothing that I find in any of the exhibits or testimony of Mr. Bachmann that would indicate he has included such an allowance in his figures. If the money were used by way of extension of respondent's facilities it would be subject to all the fluctuations and misfortunes of the business (T. 1771). I do not think even there we would be assured of our 5 per cent semi-annually over a period of years. It would be entirely up to the company to earn on that property the same as it would on other property, and, due to the difficulty of taking a composite property and assigning the amount of earning to any particular item, it would make it almost impractical, as an accounting matter, to determine that the specific addition that you had made from this sinking fund was, in fact, earning even the fair return that the property as a whole was making. If for one year that property not only failed to earn a fair return but did not earn 5 per cent you would immediately have to enter another expense item that would be an additional expense to your company; otherwise, your whole structure of the sinking fund would fall down, if you did not accrue each [fol. 1496] year this amount that represented the compound interest. The thing has to go on continuously in order to reach the result at the proper time. In view of what I have just stated, I do not think the company (T. 1772) could properly invest the money merely in its own business. I shall show later that it would be practically impossible to invest it in its own business.

Continuing my comments, it is therefore clear that the adoption of the sinking fund method of accruing depreciation immediately necessitates the use of it in an undepreciated rate base in valuation, and, as I understand it, no proposal has been made in this case to use any undepreciated cost of reproduction as the ultimate rate base. In a rate case, the burden on the public on any basis of the calculation of return, is one of the principal factors. The owners of the property, however, are entitled to a fair return and are further entitled to see that their investment

is kept unimpaired throughout the years of operation. That portion of the earnings set aside for depreciation, under any method, can be reinvested in the property, as additions, or they can be invested in outside securities. In either case, there will be a return on these invested reserves, provided the investment is made according to the hypothesis of the sinking fund method, and in the first case that the company earns the money every year and in the other case that the security does not fail to pay its interest or dividend rate (T. 1773). There is also the consideration of taxes which I shall take up later.

When the straight line method of depreciation accrual is adopted, then the base made to measure the return on the original investment constitutes that that investment shall be diminished by the amount of depreciation. When [fol. 1497] depreciation accruals are made on the sinking fund basis, they are held by the company as a trustee, either as invested cash, securities, or a possible investment in additions to the property. Under the sinking fund method, however, these reserves are compelled to earn a stated return which must be compounded annually or semi-annually in order to build the total investment which is the objective. If this sinking fund depreciation, plus interest, is considered as a deduction from the investment, and the return measured by this depreciated base, there will always be a deficiency since the investor cannot take the return on the reserve and have it in the fund also. It is, of necessity, a part of the accrual and will ultimately impair the investment, and we considered very carefully the comparison of straight line and sinking fund methods of depreciation, as set out in the examples on pages 16 and 17 of Government Exhibit No. 124, and discussed by the witness on page 605 and 606 of the record. There is a fallacy in the conclusion (T. 1774) that the rate of return, under the sinking fund method, is 7 per cent and, under the straight line method, is over 11 per cent. In the first place, the figures shown in column 8 on Government Exhibit No. 124, relating to interest on the straight line depreciation, have no place in the calculation of the return, since this interest is not a part of the rate payers' contribution to the owner of the company. The calculation itself is on a compound interest method basis, which is also wrong. The rate payers' con-

tribution remains at 7 per cent, and should equal the return on the net book value shown in column 9, plus the return earned on the reserve in column 2. Under the sinking fund method, the 7 per cent must be figured on the gross book value, and, as long as that is done, the total sinking fund provisions, shown in column 7, will exactly balance, with the gross book value. If the return has been calcu- [fol. 1498] lated on the net book value, shown in column 10, which corresponds in this same example to a depreciated rate base, an adequate result would have been attained. The interest on the sinking fund shown in column 6 is distinguished from the interest on the straight line reserve shown in column 8, by the fact that the interest in column 6, in effect, belongs to the public until a total accumulation for the retirement of the asset is completed. The interest on the straight line reserve shown in column 8 belongs to the investor since it represents a part of his outside earnings. This example, of course, deals with only a single piece of property, but with the property consisting of a large number of items, the calculation becomes much more complicated (T. 1775).

In that connection I have heard no suggestion that the patrons of respondent are taking upon themselves the responsibility of putting up $50,000 a year to insure the company a 5 per cent return compounded annually. The rate payer's responsibility ceases when he provides the $50,000. The Stock Yards Company is to be made not only a stockyards but an investment banker who must guarantee a specific return. I know of no investment banker who will guarantee a return to the investor for 24.8 years (T. 1776). When a service is rendered, or goods sold, it has been my experience that the rendition of the service or delivery of the goods and payment therefor closes the transaction and the money paid thereupon becomes the absolute property of the payee to use for whatever purpose he desires. He is not obliged to reinvest it, but may let it lie idle, or use it for non-revenue-producing properties, as he desires. If I am buying a railroad ticket, I pay the railroad company the full fare. I cannot pay less than that amount on the theory that I can force the railroad company to accept less than its fare, and invest this sum at an interest rate sufficient to return, in a specific time, the difference between [fol. 1499] the sum I have paid and the full fare. Simi-

larly, the Stock Yards Company buys hay and corn at certain seasons of the year, and pays its taxes and insurance at specific times. The patron of the yard, at the time he receives his service, pays the full amount necessary to cover those items, and, as I understand Government Exhibit No. 124, it is not proposed that any other disposition of these expenses should be made. Following the Government's theory of a compound interest (T. 1777) sinking fund method to care for depreciation, which is not adjusted as a proper item of expense, it would be equally consistent for the patron to pay less than the amount currently necessary for such items as feed, taxes and insurance on the theory that special funds should be set aside, invested and reinvested, in order to accrue the full amount of the expenses incurred by the Stock Yards Company. As I understand it, the Government considers the propriety of paying dividends and accumulating a surplus out of its rates and charges. It would be equally consistent to require separate funds for this purpose to be invested at compound interest, and, thus, reduce the sum which may be necessary to enable the respondent to pay fair interest dividends and accumulate a reasonable surplus.

Comments on Testimony of Government Accountant

On page 606 of the record, Mr. Bachmann make a recommendation as to the amount of depreciation, giving the minimum as $10,000 and the maximum as $50,000. In my opinion, both of these figures are grossly inadequate since even the maximum figure makes provision for retirement of only 2 per cent of the property in one year, and the assumed interest earned on a fund collected under the sinking fund basis is so much of a guess that gross injustice to the company might result after a number of years of [fol. 1500] accrual on such a minimum basis. The argument, on page 608 of the record, with respect to property maintained indefinitely by repairs, is merely speculation, for it is impossible for anyone, at this time, to decide whether such property will in fact give out (T. 1778) next year, five years from now, or ten years from now. The pens and fences referred to are undoubtedly short-lived property, and the renewals and replacements may be made uniformly. The expense of these renewals will be an operating expense carried on the regular repair accounts or be

equalized by carrying through the ordinary straight line depreciation reserve. I have suggested the latter in my testimony. However, there is the additional reserve which must be maintained to take care of ultimate retirements. It is difficult to see how the witness distinguishes between the repair of a long-lived structure, such as the Exchange Building, and the repair of a structure such as one of the stock pens. If it so happened that conditions were reversed and there was but one stock pen and a large number of Exchange Buildings, it is probable that the same argument would be applied to the long-lived structures as now apply to the short-lived structures, considering that the single pen depreciation may be accrued over its short life, just the same as depreciation is accrued for the longer-lived Exchange Building. At the time of retirement and replacement, the reserve will automatically disappear and a new reserve will be considered. Under the group system of accounting and the use of the straight line method, this accounting is materially simplified for such property as the cattle pens and so forth. A great deal of the statistics for structures show that the per cent of structures which exceed normal service lives is very small (T. 1779). There are certain buildings in the United States over 100 years old, but fully 99 per cent of the same type of buildings have [fol. 1501] been retired at periods varying from 20 to 50 years, so the probability of error in assuming definite service lives can be easily offset by adjustments during any period by depreciation accrual. Major replacements in buildings or other items of property merely extend the life period over which depreciation has accrued. Such replacements are always accompanied by proper repairs preferably from the investment account in the depreciation reserve concurrently. On page 610, the witness makes the statement that in effect the company would be fully reimbursed through the depreciation allowance for the cost of the Exchange Building as set up on its books. This, of course, is impossible as shown by sheet 15, of Respondent's Exhibit No. 124, and from Respondent's Exhibit No. 120. The total accrual up to 1932 for all outside real estate buildings was shown to be $399,530. Mr. Henrici's appraisal of the Exchange Building area, shown in Government Exhibit No. 114, was $373,396. The outside real estate account includes in it not only the Exchange Building but

numerous other structures, the total investment account of which is approximately $852,000. The investment on the Exchange Building itself, without its annex, garages, or equipment, is about $360,000. On a proportionate basis, therefore, the accrued depreciation applicable to the Exchange Building is only about one-half of its investment. I do not agree with the implication in the testimony on pages 610 and 611 (T. 1780). Mr. Bachmann states that his purpose in considering the depreciation now set up on the books of the company is that it furnished the best guide as to the allowance to be made in the future. This is not necessarily so as I have indicated many times in my previous testimony. On pages 611 and 612, the witness discusses the best practice of the company with respect to depreciation accruals on the Exchange Building. The present [fol. 1502] rate of accrual used by the company for the brick building included in the Exchange area is three per cent per annum. Certain equipment and auxiliary facilities take a somewhat higher rate. Prior to 1922 I am informed the same rates were in effect, and I think the investment base was somewhat lower. In Respondent's Exhibit No. 127, I recommend two per cent for the brick building in this area. On pages 613 and 614 of the record, the witness discusses what would take place provided the assets of the company were fully depreciated. That is supposition, of course. Now, it is easy to understand that in the composite property the various items of which have service lives running as high as 50 years, the depreciation reserve as a whole will never reach 100 per cent as long as replacements are made when needed, and the property is kept in continual operation. I have never known of a case under regulation where depreciation of the property as a whole was accrued beyond 100 per cent. In fact, that would be contrary to all accounting classifications with which I am familiar. It is impossible to determine the exact per cent of each asset depreciated in this property up to 1922. I think it is apparent that as a whole the depreciation reserve reached only a fraction of the total investment value of (T. 1781) the property. The re-appraisal in 1922 necessitated an adjustment in the depreciation reserve maintained for the purpose of replacements since during the period immediately following the War, prices greatly increased and replacement values increased accordingly. The cost of re-

placements in lumber alone was nearly 200 per cent of the replacement per cent of lumber in 1916. Concrete, brick, pipe and other items increased in cost enormously. The re-appraisal of the property was therefore fully justified and the consequent increase in the depreciation reserve [fol. 1503] was warranted in accordance with good accounting practice.

On pages 615 and 616 of the record, the witness discusses the investment of the depreciation reserve. The only reinvestment which this company could have made in its own property would have been a total for the property as a whole of $244,238 during the period 1922 to 1931. Even upon the $50,000 basis suggested by Mr. Bachmann the reserve would greatly exceed the possible actual investment in additions to the property. It is apparent, therefore, in this case that the investment of the depreciation reserve is a matter of outside investment instead of investment in the property of the company itself. It must be borne in mind also that under the sinking fund method whatever return is received that the fund invested in the property itself must be reinvested sometime only at least where it will assure of a similar return to that accrued on the principal. The discussion therefore, on page 616 in no way justifies the use of the sinking fund method on the supposition that the reserve will be reinvested in the property (T. 1782) of the St. Joseph Stock Yards itself.

Actual Return Received by Respondent from Investments

I have made an investigation of the property return which would be received if the sinking fund were actually reinvested by the company. As a measure of what might be expected if the company reinvested the sums which it set aside under the sinking fund method as a depreciation reserve; I have studied the actual experience of the company in its own investment of surplus funds during the years 1927 to 1932, and the result of this investigation has been set out in the form of an exhibit which is Respondent's [fol. 1504] Exhibit No. 131 (T. 1783). In this exhibit, which consists of 3 sheets, I show in the figure column the nature of the company's investment. Columns 1, 4, 7, 10, 13, 16 and 19 show the amount of the investment in each of the years 1927 to 1932; columns 2, 5, 8, 11, 14, 17 and 20 show the return; and columns 3, 6, 9, 12, 15, 18 and 21 show the

annual rate of return in per cent. Attention should be directed to the footnote which indicates that for investments of less than one year the items have been adjusted to an annual rate for comparative purposes. It should be noted that during this 6-year period, 1927 to 1932, the maximum return was 5.03 per cent in 1929 and the minimum was 2.79 per cent in 1931, with an average for the period 4.04 per cent. It should be borne in mind that this is gross return from which must be deducted income and personal property taxes. Assuming the fund is invested in securities which are not tax-exempt, my understanding is that the return would be reduced to approximately 1.65 per cent. High grade railroad bonds will not net over that net percentage. I have made a very comprehensive study on railroad finance which indicates that since 1878 the average yield of railroad bonds of the better grade has been about 4 per cent gross, and they only exceeded 5 per cent during 1920, throughout that entire period (T. 1784). At the present time railroad bonds are considered very doubtful as to the continuance of return. Money is being borrowed from the Federal Government to pay the fixed charges of railroads. In this composite property, a great deal of the retirement must take place prior to the date when the average service life of the property as a whole is reached. Now, any investment from the sinking fund depreciation reserve which has been made in such deficient life property, has to be offset by an investment which will bring in more than the average return, since interest is to be compounded on the basis of the aver- [fol. 1505] age service life. In conclusion, therefore, attention should be directed to testimony explaining Respondent's Exhibit Nos. 127 and 128, where a definite recommendation is made for depreciation on the straight line basis with extended service life, the group system of accounting, and the further use of the depreciation reserve to cover maintenance and renewals. If this is done, I am satisfied that both the public and the corporation will be amply protected, the first, as to the efficiency of operation and service, and the second as to the return on the investment and the ultimate protection of this investment against impairment.

The 4.04 per cent return which respondent has received on its various investments in the past five years is taxable under a county tax of 2.03 per cent, a franchise tax of .05

per cent which would be 2.08 per cent deductible from 4.04 per cent, leaving 1.96 per cent as the net income which would be taxable under both State and Federal income taxes, the State tax being 2 per cent and the Federal 13¾ per cent, or a total of 15¾ per cent. Deducting that tax which amounts to approximately .31 per cent would leave a net of approximately 1.65 per cent (T. 1786).

The testimony of Mr. James A. Councilor in the last paragraph on page 369 of the printed abstract agrees with my investigation and knowledge of that subject. I have made an investigation and as stated a while ago, I am quite familiar with the accounting, especially on railroads, and there is no sinking fund method used there, and I have also made many inquiries respecting other industries, particularly from the Income Tax Bureau, the Bureau of Internal Revenue, and with several corporations whose accounting I have examined (T. 1787).

[fol. 1506] Cross-examination:

Qualifications

By the term "analyst" as I used it in stating my qualifications I intended to convey the idea of an examination and analysis of statistical subjects pertaining to matters such as rates, valuations, costs and other features. It is a statistical term that usually involves statistics, getting them together and putting them up in proper form. I would call that the work of an analyst. The particular books of the respondent that I went to at the time of my examination of records included a great many journals and ledgers, and there were in addition to that a great many other working papers. I began working on this case I think it was the 17th of November (T. 1790). I had been retained some time prior to that. But I actually began my studies here in St. Joseph about that time. I was in St. Joseph the 17th, 18th, and 19th of November. I came here again just recently but no time was spent in St. Joseph between November and the present hearing. I arrived here the morning of the 29th of January, 1933, and I began my testimony on February 1, 1933. The examination of respondent's books took place during the three days I was here in November but during those three days I outlined enough work for the employees

of the Stock Yards Company so that I was continually receiving information from them during the intervening time between November and January of this year, and I was working on this case a large part of the time in my Washington office, using the data (T. 1791) that I had collected in November and the subsequent data which was furnished me by the employees of the Stock Yards Company. I was working in the stockyards office during the three days I was here. Not all of the time was spent working on the books, [fol. 1507] but I worked on data that I had collected and which was furnished me while I was in the stockyards offices. I worked not only during the daytime but also in the evenings at the hotel. I have not handled any of respondent's books since I came here on January 29. I have handled statements which were furnished me (T. 1792). On my first trip to St. Joseph during November I made an inspection of the physical property of the respondent. I made another inspection of all this property at the time I was inspecting the St. Joseph Belt Railroad in 1930. I went over all the property at that time, including both the railroad and the stockyards property. That was due to a suggestion on my part as well as a suggestion on the part of some of the employees of the Stock Yards Company that it might be a good thing to have a knowledge of the stockyard situation. I was here one day at that time (T. 1793). That was for the railroad and stockyards inspection, both. That inspection was not made in connection with the determination of depreciation reserve for the railroad. That was made because I wanted to see this property and inform myself as to its general condition, noting the nature of the maintenance and the character of the property. I have not made any inspection of respondent's structures since I came here on January 29.

The purpose of my inspection of the books of respondent was to enable me to prepare Respondent's Exhibit Nos. 116 to 131. I had in mind, at least a portion of those exhibits at the time I went over the company's books, and I knew that I would not personally abstract all that data, so I outlined many forms in which I wanted that data taken off, and that was done for me at various times from November until as recently as about February 1st (T. 1794).

My first experience with public utility regulation was [fol. 1508] with the Interstate Commerce Commission. I

did some work which pertained to valuation of railroads before I went with the Interstate Commerce Commission as an employee of the railroad. At the time I left the employ of the Commission and went into private practice in so far as my own work has been concerned, my experience in public utility regulation has been exclusively with railroad regulation. I had participated in one or two matters which might be termed outside jobs that were not railroad jobs, one of a telephone company which I recall. Up to the time I began my private practice after leaving the Interstate Commerce Commission, as to my experience with public stockyards I received part of my compensation from the Omaha stockyards about 1908. I was employed by the Union Pacific Railroad. A viaduct was being constructed which was to be paid for one-half by the Omaha Stockyards and the other half by the Union Pacific. I received half of my compensation from the Stockyards Company while I had charge of the construction of this viaduct (T. 1795). I had charge of the construction of this viaduct at the Omaha Stockyards which consisted of building a street viaduct over a portion of the stockyards. That had nothing to do with the operation of the stockyards, only as it pertained to the traffic. We had a great many traffic questions there to solve, and the stockyards traffic was greatly involved while this construction was going on. That did not cause me to make any study or determination regarding the handling of livestock in the stockyard. The construction of this particular structure was one of the pieces of property that was being replaced. Now, as far as that went, that was a stockyards piece of property that required engineering and study and consideration. It was used partially in connection with live-[fol. 1509] stock. Livestock was driven over there (T. 1796). It was driven into the yards as it would be over any city street. There was the action of the hoofs of the animals on the pavement of the structure. That was a question that required some study as to what was the best type of pavement to use. I am familiar with what are commonly called livestock viaducts, such as the viaduct at the St. Joseph Stock Yards which runs across Illinois and Packers Avenues. This viaduct which I constructed at Omaha was not a viaduct in that sense. It was more of

taking the place of an approach to the stockyards. It was a viaduct which is used for vehicular and other traffic similar to that which passes over a city street (T. 1797). Inasmuch as the viaduct was in the vicinity of the stockyard, probably a great deal more livestock passes over it than would pass over on a street some distance removed from the stockyard. I have had the cases of the stockyard railroads located at St. Paul, Sioux City, and Fort Worth, and in the course of my preparation for those cases I familiarized myself with those stockyards (T. 1798). By that I mean that I went over their property with the idea that sometime I might be employed by the stockyards and might say that I made an examination of the property at the same time of my visit when I was inspecting the railroads. I have not had other experience with the operation of the larger stockyards. Of course, the ordinary stockyards maintenance by railroads at stations along the line, when I was doing maintenance work for the Union Pacific I inspected several of those.

I have not been in the business of shipping livestock. I ran a ranch three or four years and turned the stock over to someone else to ship. I know a little about livestock.

Referring to my testimony on page 1688 (T. 1799), what [fol. 1510] I meant to convey there was that while I was in the San Francisco office of the Interstate Commerce Commission, which was the office in charge of what is known as the Pacific District, one of the five districts, I had charge of the cost accounting work in the Pacific District. Then, when I came to Washington in 1921, when the five districts were consolidated, I was given charge of cost accounting work for the five districts in Washington.

It would be impossible to say that anyone had recommended the position taken by the Interstate Commerce Commission on depreciation in Docket 15,100. The final decision in that case was written by one of the Commissioners himself, and he took the entire record as the basis for his decision. Now, respecting certain parts of that record, what I had done may have influenced the conclusion that the Commissioner reached, but it would be impossible to say "yes" to your question. There are a great many things in that docket that I did not believe in at the time it was issued and since that time a great many things that I have op-

posed, but, as a basic study of the subject of depreciation and the matters of history and the effect of methods, I think it is one of the best things that has ever been written. There (T. 1800) are one or two points which I believe are contrary to the decisions of the Supreme Court, that undoubtedly will be overruled at some time, but there are many other points that have been upheld by the courts and probably will be. I do not agree with the Commission's position that depreciation should be based on original cost. I think that the courts have very clearly stated that the present value is the basis to be used (T. 1801).

[fol. 1511] Computation of Annual Depreciation Allowance for Respondent

I think that a depreciation set up under regulation is to be distinguished from depreciation set up in the operation of a business. Under regulation, the question always resolves itself into the fair return, and, in the operation of a business, the depreciation reserve might be said to be entirely at the whim of the management. Any reserve could be set up, if they wanted to present particular facts. If I were running an unregulated factory I could, of course, instruct my accountants to set up a reserve in any amount that I thought necessary for them to set up. In that case there is no higher body than the management of the company to determine what shall be done. If the reserve which was set up proved to be entirely too high and it appeared that too much was being set up, it could be carried into surplus and paid out to stockholders (T. 1802). In setting up a reserve allowance for rate making purposes, the allowance comes from the public and goes to the investor. If the rate regulatory body errs and requires the public to contribute too greatly to the reserve, there is no practical way of returning that money to the public. It would not necessarily have to be returned to the public because there would always be the question of the interpretation of what is meant by "too great a reserve." I am assuming that no greater reserve would be accrued than the investment in the property, and then it is a question of the rate of accrual.

I stated that I thought $100,000 a year should be charged to operating expenses as an allowance for depreciation re-

serve for the respondent company. If the Secretary of Agriculture allowed a charge to operating expenses for that purpose of $125,000, and some years hence experience [fol. 1512] demonstrated that $100,000 was the correct amount, and that the patrons of this yard had been required to contribute $25,000 a year more than they should, I know of no practical way of returning that to the patrons (T. 1803). In the course of time I assume that the reserve would be used for the purpose of retirement. I am assuming all the time that the total investment on the present value, if that is used, would not be exceeded by the reserve under any method of accrual. I mean that when the respondent had accumulated a reserve of $125,000 a year on the basis spoken of, when that had accumulated equivalent to the value of the depreciable property, that the respondent would cease to set up any further depreciation reserve. I know of no instance where the depreciation reserve has ever exceeded the investment, and as I pointed out in connection with my testimony on Respondent's Exhibit No. 130, in a composite property, it is practically impossible for that to occur, providing the retirements take place at somewhere near the assumed service life on which the accrual was made (T. 1804). At any time the reserve equalled what might be termed 100 per cent of the value of investment, I would say that the respondent should stop accruing any further depreciation. As I pointed out, that, as a practical matter, is almost impossible of attainment even with the $125,000 a year. There is going to come a time within the service lives assumed by Mr. Henrici when that reserve will be materiallly reduced.

My recommendation of $100,000 a year is not based on Mr. Henrici's estimate of twenty-four and a fraction years as the composite life of the property. It is based on the rates of depreciation that I have set up in Respondent's Exhibit No. 127 and the service lives assumed for those rates of depreciation would, I believe, give a composite life of 28.6 years (T. 1805). My recommendation of $100,000 a [fol. 1513] year is not based on the thought that in 28 years that will have accumulated into a fund equal to the cost of reproduction new of the depreciable property as found by Mr. Kosters. You cannot make that statement correctly because in a composite property where the service lives

vary as in my estimate from 20 to 80 years, there are constantly recurring retirements which would reduce your depreciation reserve or hold it to normal, and there would be no opportunity to reach 100 per cent as long as there were any retirements at all. Now, there would be retirements. We know that the property is getting to an age now when we may expect more retirements than we have in the past, and therefore this reserve, under any assumption as to age, can never reach the 100 per cent, as I see it. The taking out of this reserve of moneys from time to time to make replacements of property retired will keep the reserve from ever reaching an amount equal to the cost of reproduction new of the property as found by Mr. Kosters. You should consider all the time that this is a composite property with varying service lives of component parts. The making of replacements would not necessarily extend the composite life of the property. We may learn as we go on that an assumed service life, we will say, of 25 years, is not the correct service life, and we may correct it to 20 years or to 30 years, or some place in between. It is practically impossible to assume exact service lives (T. 1806). The replacements in many instances may be of superior property. I know in the case of railroads, the introduction of superior ties has greatly increased the life of the tie structure as a whole. The making of replacements when they should be made does not necessarily have a tendency to lengthen the service life of the unit of property. If, in the first instance, your assumption of service life is correct, the replacement simply means that when the new property is installed, it again is [fol. 1514] going through the same cycle of life as the original property which it replaced. As to whether a unit of property of an assumed service life will continue to be in condition to render service for the number of years assumed, without having any replacements made in parts of that unit of property during that period, I assume that you are overlapping what might be termed repairs. There will be restorative repairs in order to attain the service life assumed. The property must have certain repairs unless it is a property similar to a stone wall or something of that nature where the repair would be what might be termed a major repair, if it was made at all. I estimated

the life of the Exchange Building to be 50 years (T. 1807). In that estimate is assumed that ordinary repairs will be made when and as needed, and if those repairs are not made, I would expect a shorter life than 50 years. The same thing is true of those larger restorations of parts commonly called replacements. If we replaced a wall on that building, I would call that a matter which should be taken account of in the replacement, but I think the ordinary painting repairs or here and there the installation of a piece of new flooring or something of that kind has nothing at all to do with the service life. The depreciation reserve is intended to cover only the expiration of the service life of the property and not the normal running repairs. If there was a complete replacement of the roof, I would ordinarily carry that as a depreciation charge (T. 1808). I do not think that a complete replacement of the roof would have the tendency to carry the service life of that building beyond the original 50 years. If you carried it through the depreciation reserve, you would retire from the reserve the cost of that roof, and would then start a new accrual on that portion of the building represented by the roof. That automatically would extend the service life slightly, and [fol. 1515] if you would put in a new wall, you get the same effect, but the service life assumed in round numbers at 50 years is intended to convey the idea that the building's entire useful life will be exhausted at the end of that period (T. 1809). If the building became useless, the roof would become useless with it, no matter how new the roof was.

In setting up a depreciation reserve for the Exchange Building, if we assume that the building cost $100,000 and has a life of 50 years, I would recommend that $2,000 per year be put to the depreciation reserve for that building. At the end of 50 years that would accumulate the $100,000, less whatever had been taken out to cover replacements, and if there had been retirements taken out, the reserve would not reach the $100,000 until sometime longer than the 50 years. Assuming that in spite of the take-outs for retirements the reserve for the building reached $100,000 at the end of 60 years and the building was still standing and serving its purpose, there would be no further additions to the reserve under what I would term correct accounting practice. I would not expect any further operat-

ing expense chargeable to the public beyond that time (T. 1810).

As to whether I would approve the practice that is sometimes engaged in of having a reappraisal of such a building and starting to set up a new depreciation reserve, that would depend entirely on the purpose of the reappraisal. If the reappraisal was intended to adjust values under this period of 60 years, I would say that was entirely correct to reappraise the building and find out whether the building was then an $80,000 structure, or a $100,000 structure, or a $120,000 structure, and if it turned out that it was a $120,000 structure, there would still be the additional $20,000 that would be usable to develop a further depreciation reserve, which would be entirely proper, because if the build-
[fol. 1516] ing was, in fact, replaced, it would cost that amount of money to replace it. If the appraisal showed the building to be only a $100,000 structure, there should be no further charges to operating expenses for depreciation reserve.

My understanding of the purpose of the reserve is that it is not to accumulate any excessive amount. If at the end of a 60-year period there was a proceeding such as we are now engaged in, I think in the event (T. 1811) the Secretary made a reappraisal of the property and found its value to be exactly $100,000, and considering that that was the only property that was included in that particular depreciation accrual, he would not require any further accumulation of a reserve. However, we get right into the thing that I pointed out continually in my testimony, that this is a composite property, and, as I have grouped the structures, the Exchange Building itself would be in a group with other structures which would have differing service lives than the Exchange Building itself, so it would be nearly impossible to reach the $100,000 total accrual on such a basis. The estimate of service life of any property is based on a view of all the conditions pertaining to that property, among which are the age of the (T. 1812) property itself, the amount of repairs that have been made in the past, the existing condition, the experience with buildings of a similar nature, or buildings that most nearly approach the type of the one being considered, each of those facts have been given consideration in order to adopt what we think would represent the fair service life. The age

of a building or the service life is the time from the original construction to the date of retirement, and the method that I have used in this case is to assign a rate of depreciation which, of necessity, is dependent upon a service life. Now, the service life of a structure such as the Exchange Build-
[fol. 1517] ing, we might say, is 50 years; therefore, I have adopted a two per cent rate, knowing that that rate has not been used in the past, but merely recommending that it be used in the future, so that a suitable depreciation reserve will be developed before the retirement of the building (T. 1813).

In making a study to determine the service life of a building, the particular building I am examining, of course, is usually such that the records are available as to the age of that particular building. The records as to expiration of service life are what might be termed "general records." Sometimes it is very hard to find anything that is exactly comparable to the particular structure you are examining, but it is more the type of structure and the nature of the use which governs the final opinion that is expressed. We do not have tables set up for buildings similar to the mortuary tables which are set up to estimate the lives of human beings. I have seen a great many publications, I have referred to them in my testimony, the pamphlet gotten out by the Bureau of Internal Revenue, that sets up a service life for a large number of different structures and a great many text books that furnish similar information, but each particular case requires particular study. I think those are merely guides as to general life expectancy. In arriving at the life expectancy for the Exchange Building, I gave weight to the life experience of office buildings which had been built and used and then at some time or other come to the end of their service lives. I can say that I do give weight to that form of data. I think that is a part of any study. You have to consider everything available that even approaches the same nature of the case you have under investigation. That factor does not have controlling weight in my determination. It is simply one of the matters considered. As I stated in the beginning, there are a number [fol. 1518] of matters which have to be considered in determining service life, but it is doubtful, if, in any two cases,

you would assign the same weight to the same form a data that you considered.

As to how I reached the conclusion that the reasonable expectation is that the Exchange Building will serve for 50 years from the date of its original construction, I had knowledge of the age of this building. I also had the benefit of my own examination and such testimony as I read in the previous hearing. I had the benefit of a study of the various repairs that had been made to the building during the past 10 years. I had a general knowledge of brick buildings of a similar nature and, after giving consideration to all of these factors, it appeared to me that, that assumption that after the expiration of 16 years, providing the service life had not been extended by some major replacements, that the useful service life of this building would expire. If I were to return to St. Joseph even twenty years from now, I might be surprised and I might not be surprised to see that building still standing and rendering service, depending on what I found had taken place in the meantime. I do not think that I can add a great deal to what I have said with respect to what I took into consideration in determining the service life of the Exchange Building (T. 1816). It is a matter of engineering judgment after considering the facts, and it is not unusual for two engineers to differ as much as 10 years on the service life of a building half a century old. That would be true even though both engineers were pursuing engineering principles.

The end of the service life of that building, whenever it comes, may be occasioned by any one or a combination of any number of factors which I mentioned on my direct examination as bringing about deterioration. I think the [fol. 1519] causes that I mentioned are the principal causes, but there may be others, although they are probably less important. Wear and tear due to use and the action of the elements would be a factor, and also rust, rot, and decay, which are words ordinarily used for the action of the elements. If the owner decided to tear the building down and to erect a larger building on the same site, inadequacy might be one of the causes of replacements (T. 1817). The building, or many of its parts, might become what we term "old-fashioned" and the owner might think it profitable to have a more modern building and tear the building down for that reason.

There is that form of obsolescence, and there is also a form of obsolescence, I think, that is brought about by Government regulation, something of that nature which would make the building no longer useful to the Stock Yards Company. One instance is the southern cattle division, where the need for that particular division ended with the prohibition of the shipment of ticky cattle. Another form might be, as I understand from the testimony in this case, that there was a recommendation that about ⅔ of the Exchange Building was no longer used and useful. I think that might possibly make the building obsolete for the purpose intended (T. 1818). If the Secretary should follow the recommendation of Mr. Christensen and eliminate the Transit House hotel building from the rate base, in so far as this rate base is concerned that building will have come to the end of its service life. It is out of it and it is out under a Government regulation. If its expectancy of service life had been properly computed at the beginning, there should be in the depreciation reserve an amount wherewith to retire the entire building. That, of course, would be the theory of the accrual of depreciation reserve. We would know from experience, however, that in single pieces of [fol. 1520] property or in composite pieces of property there is expiration of service life at less than the average service life assumed. I have included the Transit House with other outside real estate. In so far as it is a brick building it goes in with brick structures. Some of those may expire at less than the 50-year service life assumed (T. 1819). If the Secretary does not find that building to be used and useful, my recommendation as to the proper accounting would be to retire it and charge its appraised value against the depreciation reserve. Of course, that would not be according to the past accounting of the company. The past accounting of the company would be such that all that could be charged against depreciation reserve would be the amount already accrued on that particular building. In making my estimates of the lives of the structures of respondent's depreciable property, I probably have not given weight to the possibility that in some rate determinations the Secretary or whoever has control of the matter may exclude property from the rate base and bring it to the end of its service life. I have stated that that is one of the causes of obsolescence, and I have given weight to

possible future obsolescence. That particular phase of obsolescence is one which may occur this year or next year, but may possibly never occur again in the future. With reference to the recommendation that ⅔ of the Exchange Building be excluded from the rate base as not being used and useful, I did not go into the record to determine the reasons on which the recommendation was based (T. 1820). I have been informed that the various offices in the Exchange Building other than those used by the respondent had been leased. I do not know whether the exclusion of a portion of the building from the rate base would occasion the vacation of those offices by their tenants. I know of [fol. 1521] nothing in connection with any structures, not only these structures, but other structures, which could prevent obsolescence in some form.

You can anticipate obsolescence in a building in accordance with the best prophesy as to the future, and still you might miss it (T. 1821). In my testimony where I used the terms "hidden" and "invisible" in reference to a depreciation which was going on in the present property but could not be seen, I referred partially to obsolescence. That has reference principally, though, to the actual expiration of service life due to any cause. The apparent condition of the property may remain the same from year to year, or as compared between any two periods, but there is this invisible expiration of service life that is going on all the time. That is, if we assume that a group of structures is going to last 50 years, there is, without any apparent change in conditions, an expiration of service life, and, if our assumption is correct, when the 50 year average is reached, the service life will have expired.

My idea of obsolescence is something that occurs rather suddenly at the time it occurs, and in anticipating obsolescence we cannot assume the exact year that it will occur. Therefore, when we consider obsolescence, we considered it merely as an average of what might occur suddenly at some particular time to a large number of structures in a group (T. 1822). I would hardly say that obsolescence is something that comes on a building in a few minutes. I think, for instance, if the building is no longer suitable for the purpose intended, you will know about it a few years before possibly, and you start to remove it, and then, due to economic conditions, you may decide to get along with it a few

years longer, but if you happen to be particularly prosperous and want to replace it, you would have reason for replacement due to obsolescence that had made itself apparent. [fol. 1522] As to whether I found any obsolescence apparent in the stockyards structures, I cannot recall any particular instance right now. There is always the possibility of substitution of superior materials, for instance, concrete fence posts might be substituted for wooden fence posts, and it might be decided that a certain type of gate that is used now is not quite as good as a superior type. Those are small factors, but I do not recall any large factor of obsolescence that is observable. As to whether concrete fence posts would serve better than the posts that are there, it would depend on the financial operations of the company, whether a recommendation could be made for a substitution (T. 1823) of that kind. We know that concrete would have a longer life than any wooden fence post, although we know that a certain type of cedar fence posts has an extremely long life. Now, it would require a calculation as to the probable new investment and the probable loss of old investment, and the remaining service life, when the material is going to be removed, and then the manager would have to decide whether they were prepared to appropriate necessary money for this new investment. The actual movement of livestock would not be changed in any particular, as I see it, although there would be the annual reduction in maintenance charge which would be due to the fact that there would be fewer posts replaced during the time that the concrete posts were used. On the other hand, there would be the loss in service life of posts that were there today. It is doubtful whether a stockyard having concrete fence posts would make any difference to the shipper (T. 1824). It is my thought that when the wooden fence posts come to the end of their lives, the company might decide to replace them with more lasting material. I do not know that there is any better type of gates than the stockyards [fol. 1523] has, but I was just saying that there may be a better type. Other than that, I do not think of any important obsolescence in the property as it stands now. A considerable portion of the property was constructed in its original location between 1897 and 1900. During the period from 1900 to 1933, there has come into use a great deal more steel and concrete construction. The use of wood and brick,

however, has not decreased materially (T. 1825). There may have been changes going on of various kinds. Office buildings of the type used by the Stock Yards Company, though, as far as I know, are not enough different to warrant any statement that there has been a radical change. If it was in a high-grade metropolitan area, it certainly would be true that office buildings or hotels which were constructed prior to 1900 and have not been modernized are considered pretty old-fashioned today, but in an area such as the stockyards, it is doubtful whether the same rate of change would be effective. It seems to me that it depends entirely on the type of business, and the location of the building of that kind, whether we could say that the more modern structures were better style than the older structures.

Even though this property has gone on since 1900 without showing any obsolescence, obsolescence is one of the factors that is always present. It seems to me that we know enough of the expiration of service life to say that obsolescence will be one of the causes of retirement of a portion of the structures in the stockyards. It may not be the cause of retirement. I do not say that obsolescence is the cause. I say it is one of the factors which may produce the retirement. And I say possibly, I would like to correct one of the impressions you have, as I understood your statement, just now, that I said there was no obsolescence in the property. Now, I do not think I wanted to make it quite that strong, [fol. 1524] that there was no obsolescence. I think what I intended there was that the obsolescence that might be expected for the future has not reached a stage yet that was particularly observable or would in any way influence an expectation of an immediate retirement. With reference to how I regard obsolescence, the decision that a particular structure has become obsolete is something that probably will occur comparatively quickly, but the obsolescence that is brought about by changes in the art is probably going on all the time but not observable. It is my thought that when you observe it you should give effect to it at that particular time, but prior to that time you must (T. 1827) consider that it is liable to occur. You have to take it into account in determining the rate of depreciation of service life, because it is a fact that obsolescence does occur. With respect to inadequacy, it is similar in a way to obsolescence, although, in a growing community or a growing business,

inadequacy develops just as fast as the business develops. In times of depression why, a great deal of the progress, the inadequacy is wiped out, but on continuing growth inadequacy develops just as fast as the growth goes on. Theoretically, a structure should be retired when it can no longer be operated economically. Meaning by that, of course, that it has reached a stage where it is inadequate to perform the service for which it is intended. So that inadequacy that is approaching should be recognized and provision made to make a replacement just as soon as it is thought economically sound to do so.

Valuation depreciation is entirely different from the discussion of depreciation for accounting purposes. There the existing condition is observed at the time of the valuation inspection. I would be more interested in determining the exact physical condition of the building rather than the [fol. 1525] service it was performing. For valuation purposes, you would determine the accrued or existing depreciation from an inspection of the building. I would make inquiry into the business that was being conducted to determine whether the building was rapidly approaching a time when it would be inadequate to house the business. I can illustrate that by an example with which I am very familiar, and that is the determination of condition per cent of a steel bridge. A steel bridge on a railroad is designed to carry a certain load and the actual condition of the bridge may be observed to be, we will say, 75 per cent, but upon inquiry it is found that that bridge is now carrying loads in excess of those provided for in its original specifications. That quite frequently happens. Now, I would give that consideration in fixing the condition of that bridge because I would be sure that that bridge, then, was not performing the proper service that it was intended to perform (T. 1830).

I stated that the determination of accrued or existing depreciation and the determination of the proper depreciation reserve were entirely different matters. The accounting depreciation for the reserve is a provision to take care of expired service life or to replace the property at the time of its retirement. The physical depreciation determined in valuation relates entirely to the existing condition of the property and the age or future service life does not control that condition, only as matters of interest, you might say, because the existing condition is a fact that you can observe,

and the condition may be brought about by recent repairs or replacements of a part of the property, so that the expired service life which I am assuming, upon the straight line basis, takes place uniformly, may be something entirely different than this existing condition on the day you find it. I think Respondent's Exhibit No. 130 illustrates that, that diagram where the existing condition brought about by re- [fol. 1526] tirements might be the same for a large number of years and still the percentage of expired service life would be an entirely different figure (T. 1831). The obsolescence that I think should be provided for in a depreciation reserve may or may not take place. For instance, we take a building that may retire because it burns down, it may retire because it is obsolete for the purpose intended, it may retire because it is inadequate, or it may finally wear out, but, due to one of those causes, we have to provide for this ultimate retirement. We don't know now which one of those is going to be the exact cause of the retirement, but we do know, from past experience, that those particular causes have been the ones which forced retirements of similar structures in the past. So, to my mind, it is not necessary to say that because there has been no big obsolescence in the property up to the present time, there will be none in the future. There may have been obsolescence in the past. I think that there was an indication in some of the records I have examined that a form of cinders used on runways was replaced by paving, and that certain types of pens were changed somewhat, and various matters of that kind that I would class as obsolescent and have taken place in the past (T. 1833).

I mentioned accidents as another factor of depreciation, and under accidents named fire, flood and tornado. There might also be riots of various kinds, and there might be other accidents which would happen, but I think wind, rain and fire are the three elements which cause most of the trouble in the nature of accidental destruction. Those are one of the bases of setting up a depreciation reserve. The exact weight assigned to any one of those would be absolutely indeterminate, but, as I said a moment ago, the retirement which will ultimately take place must be due to a [fol. 1527] cause, and I have named some of the causes which might bring about such a retirement. If the Exchange Building were totally destroyed by fire I would

charge off the retirement of the building against depreciation reserve (T. 1834), with any adjustments there might be for insurance. Insurance seldom covers the total loss. I do not know that it is a fact that respondent cannot insure its structures for their full value. I do not recall an entry on respondent's books which showed they made a profit by reason of having had a fire. As to whether the loss as a result of fire should be taken care of by insurance rather than setting up a depreciation reserve for it, in so far as that particular item was concerned, there might be some influence given to the service life, if you were protected against one of the causes of depreciation. However, you would have left all these other causes that must be provided for. The only effect that I can think of in the case of a building such as the Exchange Building would be an infinitesimal extension of service life. I cannot imagine that I would extend the service life to any extent at all, due to that one factor (T. 1835). If the respondent insures its structures to their full value and the premiums for such insurance are allowed in the operating expenses, and something was also allowed for that hazard in depreciation reserve, I would defy any man to find the duplication. I think it is a pretty far-flung theory, if you try to figure duplication on that. A fire or accident of that kind always occurs prior to the expiration of service life, and I think in one of my exhibits I showed that the retirement before the end of the service life was only partially provided for under the straight line method, and much less provided for under the sinking fund method. In making my recommendation of $100,000 per year for depreciation reserve, I have not itemized it so many thousands for the hazard of obsoles-
[fol. 1528] cence, and so many thousands for the hazards of inadequacy, and so on. I have never heard of any such allocation being made on the subject of depreciation. It is not a practical matter to outline a separate rate of depreciation for each possible cause that might occur. It is the depreciation itself as a whole that we are interested in, and when we determine a rate, we consider all of the factors that might cause the retirement of the property (T. 1836). My service lives are based on the retirement due to any possible cause, and while I list fire as one of the causes, I also know that in the past the Company carried insurance, and I assume in the future it may carry some insurance. That was

considered fully. Nevertheless, I arrived at my final rate for final service life, considering all other factors that may enter into the cause of the retirement (T. 1837). The same considerations apply to floods and tornado and the element of accident. In my direct examination I took the position that the cost of repairs should be charged directly as an annual operating expense, and the cost of replacements charged to depreciation reserve (T. 1837). I do not believe it is really necessary to distinguish between a repair and a replacement under the method that I have proposed here. You will recall that I determined approximately the investment cost of repairs that had taken place in the past. Now, if at any time, material is replaced in the course of a repair, it is possible to determine with reasonable accuracy the investment cost of that material and to go into a reserve carried for that purpose. I see no reason why the average repairs over a series of years may not be used as a basis for repairs until they are shown to be inadequate, so that in addition to this retirement reserve, which is the $100,000 I have spoken of, we would have the annual replacement charge for such materials as are replaced in the course of [fol. 1529] the maintenance of the property. That would exclude labor items that are not represented by investment. Certain repairs would be made on a gate without replacing material. I would not consider that those were the type of repairs that in any way would be concerned with the reserve. However, if we replaced the entire gate, that would be a matter of record cost which could be allocated to the reserve. Now, the reserve might be adequate in some years and inadequate in others; and that is the purpose of a reserve, to equalize expenses. And that is all that this repair reserve would do. I would have a repair reserve in addition to a depreciation reserve. Then, if we, by accident or otherwise, used the wrong (T. 1838) reserve, it would not affect the annual operating expenses in any way, because it would equalize, as we went along. The two reserves might be combined. No objection to carrying one depreciation reserve, one part of it being made up of replacement costs and the other part being made up of retirement costs. If I carried one reserve to which was charged the repairs as well as replacements I would not recommend that only $100,000 annually be placed in that reserve. The $100,000 reserve that I spoke of was a retirement reserve. A repair reserve

would be something in addition to that. That would be represented, roughly, by the average repairs during the past six years reduced to the material basis. I presented Respondent's Exhibit No. 129, where I had reduced these repairs to a material investment basis (T. 1839). In other words, I excluded labor items which might be termed ordinary maintenance labor, or labor items which were in excess of the original investment labor.

When you make a repair, it is generally necessary to expend labor in taking out the old part, and then additional labor in restoring the new part. The additional [fol. 1530] labor in restoring the new part is generally higher than the original investment labor, and certainly the labor of taking out the old part is something that did not appear in the investment at all; but my thought was to reduce this material replacement to a cost of material and labor represented by the original investment, and use that as a measure of the proper reserve for repairs. If a hook on a gate was pulled out and was replaced on the gate that would be a straight operating expense and have nothing to do with this repair reserve. I would not set up any kind of reserve for that (T. 1840). That would be ordinary maintenance expense. If a board on a gate had become decayed and the management decided that it should be removed and a new board put in, that would go as a repair reserve until the replacement amounted to something in the nature of an entire area that was being replaced, or something like that. But assume the company has taken that it would be a repair reserve, that matter would not be gone into in the minute detail that you have mentioned, because it is not necessary to do that. You would have your material and supply charges for an entire year, for instance, or an entire month, depending on the basis of accounting. That would be adjusted so as to be handled through this reserve. It would not be necessary to make an accounting entry for every board moved or anything of that kind. In the replacement of this board I would charge the cost of the board, plus the investment labor, to the repair reserve. As I recall, one of the inventories, I don't know whether it was Mr. Kosters' or Mr. Henrici's, used a figure of $55.00 (T. 1841) per thousand for lumber. That is made up, as I recall, of $30.00 material and $25.00 labor, something like that, anyway.

That was the investment cost or present value of that labor and material in that board and that labor item is all I would [fol. 1531] use, regardless of whether the actual labor spent on taking out the old board and putting in the new board amounted to $100.00 a thousand. It might very well. I would use the same ratio of labor to the material cost as I found either in the investment or appraisal, whichever was used, as the basis. The excess labor cost I would charge to the annual operating expenses (T. 1842). The service life method is usually the foundation of any depreciation reserve. There have been other methods adopted; for instance, the method of hours of use, or some such method of that kind, but, in general, the straight line or sinking fund method is based primarily on the service life method. I based my recommendation of straight line depreciation on service life or service lives, and Mr. Bachmann based his estimate of the sinking fund depreciation reserve also on service life, but there is some difference in the length of the service life estimated for particular units of property as between Mr. Bachmann and myself (T. 1843). In my inspection of the property I found that it had been and was being kept up in good condition, what might be termed "normal operating efficiency." There was no deferred maintenance observable which would affect the accounting depreciation. I would say that the elements of wear, tear, rot, rust and decay were operating to a normal extent. As to obsolescence I would have to say that the operation of that element was normal. There is nothing to indicate that it was unusual in any way or different from what might be termed average. I am acquainted with the Transit House Hotel and the fact that it yields a very low gross return to the respondent (T. 1844). I do not know as a fact that the hotel is patronized principally by a class of patrons who do not desire the features that we customarily associate with a modern hotel. It does seem reasonable that the shippers of livestock might [fol. 1532] desire to get along with as cheap accommodations as possible. I think that is a reasonable assumption, and, also, to be near the scene of their negotiations for the sale of the stock. It might be that on that account they would be willing to accept less pretentious accommodations than they would if they were on some other business in the city of St. Joseph. As to whether I regard the element

of obsolescence as operating normally in that building, I would say "yes", and, to an extent, "no," because I think that is very possible that obsolescence has been increased there, in late years, due to the change in the character of the transportation of livestock. It is perhaps easier for a seller of livestock to get out of the city than it was when he was shipping by rail and handling his stock that way and then leaving himself on a train. Now, he may come to the city in a truck and also leave by truck whenever he feels like it. To that extent, there would be less patronage possibly of the Transit House (T. 1845). It is possible that the element of obsolescence is working in that building a little bit more than the normal degree. There is no direct way of measuring that. I would not measure it by the income entirely because that is subject to fluctuations, of course. I think that the general tendency might be to reach a point where possibly that Transit House might not be required. It is very possible it may. When I use the word "normal" I am not necessarily thinking of the common experience of commercial hotel properties in cities. I do not know that the Transit House has ever been of a status of an ordinary commercial hotel. I think it was built, if I understand the history correctly, to accommodate the buyers and sellers of livestock, and I doubt very much if at any time in the thoughts of the owners of the property, it was to be a paying investment to the extent that a hotel now in the center of the city would be. As to [fol. 1583] the kinds of buildings or structures from which I would draw my idea of the normal experience of the Transit House in determining the element of obsolescence, obsolescence of course, is the thing that might come to a building at a time which cannot be definitely foreseen, but I think normal experience in any class of property, such as a building, has indicated that a certain percentage of retirements is always due to (T. 1846) what may be termed obsolescence. Now, unless there is some very unusual economic factor that is working, I would say that we would have to assume that the progress of obsolescence was normal. I would say that just as soon as you have a very definite indication of some factor which might produce obsolescence, then you have a slight departure from normal. I would recognize that one of the principal features of the element of obsolescence which brings hotel properties to the end

of their service lives is the matter of growing old-fashioned and the public preferring a modern up-to-date hotel in a commercial or business center of the city, but just as soon as you get beyond what might be termed the normal range of hotel business, you always encounter special conditions. If you think of a hotel in the slums of the city that factor would have very little influence on developing obsolescence. Similarly, we have in the Transit House a hotel in a situation peculiar to itself (T. 1847). I understand that the Transit House is very adequate to the demands made upon it in so far as space is concerned. I believe it is true that the principal trouble with it as an income-producing property is that it does not have enough patronage to keep it reasonably well-filled. The rates charged, of course, are set at a very normal figure. The element of inadequacy is present only so far as you can observe it at the present time. I cannot prophesy as to the future regarding in- [fol. 1534] adequacy, only as indicated by the present operation we could say the statement was correct.

I think the Exchange Building is well and adequately maintained against elements of wear, tear, rot, rust and decay. I see nothing that would indicate a departure from normal over a period of years (T. 1848). From an operating standpoint, considering the element of obsolescence alone as it relates to the Exchange Building, I would not think that building is comparable to the office buildings in the down-town areas of cities because the character of business there is dependent entirely upon another industry. Down-town office buildings occupied by doctors and lawyers and business men are dependent upon numerous classes of business. This particular building is dependent upon a particular class of business. It frequently happens in cities that there is an office building that is apparently tenanted, and the building of a more comfortable and convenient modern, up-to-date office building causes the tenants to move out of the older building and seriously affects its business, and even affects it to the extent that the owners decide to tear it down and build a modern building (T. 1849). At the present time there is no building other than the Exchange Building that would furnish the same facilities and be in the same strategic location as the present Exchange Building. If any other building were erected in the same strategic location, so far as I know it would have

to be on respondent's property (T. 1850). In the built-up portions of cities generally the office buildings are built upon the particular lot that has been purchased for that purpose. If the building becomes inadequate, and the structure is not strong enough to take on additional stories, the owner wanting to make it more adequate has to destroy the building if he decides to build on the same site. In a majority of cases the older structures are not strong [fol. 1535] enough to take on additional stories. I think it is frequently the practice for a good business man to construct his foundation and lower walls so that they can be added to if ordinances will permit it. That is not an unusual practice in buildings built within the last ten or fifteen years, but twenty-five or thirty years ago that practice was not so prevalent. It happened occasionally, though, even then (T. 1851). Many office buildings which have come to the end of their lives particularly in cities, have been torn down because they were inadequate, but that has always been combined with obsolescence, to my mind. The idea that a little more attractive and more modern building is required always goes along with the inadequate feature of it, with removal. I have observed that respondent has erected an Annex to the Exchange Building. I was not informed as to the exact reason for this construction. It is possible that larger space was needed (T. 1852). The area around the building is not unusual for a building of that type. I think that in separate office buildings, I have seen the same situation in the grounds of large manufacturing companies. The grounds around an office building are left vacant possibly for the purpose. If the building becomes inadequate, and the area there similar to a man's lawn around his house. There is a lawn on one side of the Exchange Building, I believe; back of the building there are low-cost garages, livestock pens and structures of that kind. If the Exchange Building became inadequate it would be possible to build an annex for expansion without wrecking any high-cost proper in so far as area is concerned. I think that at some of the stockyards there have been additions built to the Exchange Building, and at others the Exchange Building was wrecked and a new one built, replacing the old one. With respect to this latter, I am thinking particularly of [fol. 1536] Omaha. I do not recall *of* any large stockyards

other than Omaha that has erected a new Exchange Building within recent years, but I know that one was an outstanding case. I am not informed as to the date which the Exchange Building at Chicago was constructed. It apparently is quite new (T. 1854).

I gave the experience of industrial properties such as factory buildings, coming to the end of their service lives weight as a guide in making my estimates of the service life of the respondent's property in a very general way only. Of course, I have had knowledge of various types of buildings, constructed of certain materials, and, in any particular case, it is absolutely necessary to know the circumstances in that case. Industries retire buildings for innumerable reasons, and it would have to be the facts of the particular case that would govern the use of any particular service life of the building owned by an industry (T. 1855). I think that two large factors which have brought about retirement of factory buildings in this country are obsolescence and inadequacy during what might be termed the period of industrial expansion, but we have now apparently now passed that period and are back to a period that is similar to that which went on for 40 or 50 years before, when that was not true, that many factories continued to produce the same products year after year and retirements of buildings would be due to other causes than this expansion program that has been so prevalent in the last 8 or 10 years. There would be probably instances where you could select factories which were built 40 or 50 years or even 60 years ago which are operating in the same buildings with very little change other than just upkeep. The advance of the arts, especially the mechanical arts and in inventiveness, has caused factory buildings to [fol. 1537] be erected, stand a few years, found to be inadequate or not equipped in the most modern way, and then destroyed and other buildings rebuilt. In connection with that portion of the industries which have become prominent, we will say, since 1905 to 1910, if we take the industries that were operating from the time of the Civil War to 1905, we would find the change was remarkably uniform, but with the introduction of more electrical appliances and the automobile, we reach the stage of industrial development which was so extensive that it warranted these complete renewals and retirements of buildings, which a

few years before had been thought to be absolutely adequate, but, if we stuck to our old industry prior to 1905, which did not include those newer developments, I think we would have found a much smaller change. It has frequently happened that one of the things that brings a factory building to the end of its service life is the going out of business of the owning company by reason of insolvency. I think that is especially true since the World War. It may be true that the stockyard industry is one of the more stable industries. There are a great many others that, in (T. 1857) magnitude, are equal to or greater than the stockyard industry, that have been fairly stable throughout the same length of time that stockyards have been operating. I do not know of any stockyards which have gone out of business on account of insolvency. As to reorganization of stockyards, in this regard, there was a reorganization of the yard here at St. Joseph, before the present stockyards was placed under its corporate management that it is at the present time. I do not know the reason for this reorganization. I do not know of any yard which has gone out of business by reason of insolvency and ceased to exist as a stockyard.

I do not know of any of the rules of the Bureau of Internal Revenue which state definitely that the straight [fol. 1538] line method of computing depreciation reserve should be used, although I do not know. I do know that they never have approved adjustment of depreciation (T. 1859) in the corporation's returns unless it has been on the straight-line method. The tax payer computes depreciation reserve on the straight-line method with the thought that if he does not it will not be approved by the Bureau, and that is the result of experience with the filing of tax returns to the Bureau. Depreciation there is calculated on the basis of the original cost of the property, or its 1913 value. As far as I know when depreciation has been set up on the tax returns to the extent of one hundred per cent of the value of the asset, the Internal Revenue Bureau does not allow any further depreciation to be set up on that asset. Any deduction from gross revenue is an advantage to the tax payer. Of course, the greater the deduction, the more advantageous it is, but the Bureau of Internal Revenue draws the line as to how great that deduction may be.

They limit the rates that may be used and introduce other factors that would limit the amount of that deduction. It is not left entirely to the tax payer (T. 1859). I have known of cases, I cannot cite you what they are from memory, where tax payers claim that the method, the annuity method, or some other method, I forget the exact name that was applied to it, but it was a method that would give the tax payer a greater deduction in the later years of the property, was recommended, and that the Bureau of Internal Revenue turned that down.

I used words something to the effect that respondent's depreciation experience prior to an order fixing the rates would have little or no relevancy. The idea there was that prior to the regulation, the corporation might have been influenced by some factors which might not be prevalent in a property that was under regulation by the Secretary [fol. 1539] of Agriculture. I understand that the Secretary of Agriculture's power of regulation over this property started in 1922 (T. 1860). It seems to me that until the Secretary prescribes a rate order of regulation the company was still operating under its own methods and desires. I think Respondent's Exhibit No. 120 which I prepared sets up the experience of the present company from the time it began accruing depreciation until the present time. I believe that is the only exhibit which sets up experience prior to 1922 (T. 1861).

The thought that, if the determination by the Secretary that certain of respondent's property is not used and useful be upheld by the courts, would bring that property to the end of its useful life, may be explained this way: certain property, which I designated, that seemed to me had of necessity reached the end of its service life with this corporation and reached (T. 1861) the end of its service life as a rate base. I do not know that that influenced me in my opinion that the company's experience prior to the issuance of a valid rate order would have little relevancy in determining the needs for depreciation reserve. I was influenced by the fact that the necessities for the depreciation reserve may have been any one of a number of reasons other than ascertaining the true operating expenses to assess against the public for the use of the property. The public, under regulation, pays for the expiration of service life, just the same as it pays for the maintenance of the

property. That is a part of the rate that is assessed against the public. Prior to regulation, the corporation may fix fair rates or it may not fix fair rates. As long as the public will pay, they do; it is, in plain language, none of the business of the public, but those rates are disposed of and the corporation may, for its own accounting purposes, charge no depreciation or it may charge very heavy depreciation. [fol. 1540] Under regulation, however, the public does pay for this expiration of service life which is a part of the depreciation charge (T. 1862).

In explaining my thought as to the fundamental reason for the necessity of setting up a depreciation reserve, or at least making allowance for annual contributions to such a reserve, it seems to me that the public always is required to pay the fair cost of operating the property and, in addition, give the stockholders, the owners of the corporation, a return on their investment; and to also receive sufficient compensation so this investment stays as it originally was, without impairment. In order to do that, he must receive enough for normal maintenance and, in addition, receive enough to provide a fund which will adequately pay for the retirement (T. 1863) or replacement of any of its property (T. 1864). From a legal standpoint, I don't know whether the Secretary has any control over the depreciation reserve after he has once made the allowance as an operating expense. Relative to my statement that respondent's property had about reached the turnover stage, that was with respect as I recall it to the property I classed under the head of stockyards' buildings and improvements, which included the pen areas. The turnover stage is a phrase that I have used a number of times and I have heard it used by other experts testifying on the subject of depreciation, it being the stage of renewals of the property of a composite nature where the renewals may be termed to be practically normal or uniform, and that would be true of pen areas (T. 1867) where the service life was assumed for the pens themselves as rather low and the age of the property was such that a great deal of it had already been renewed, so that we get to the point where renewals of renewals finally goes on to infinity and it reaches a uniform stage as a whole. I would expect the direct renewals [fol. 1541] to be about the same each year. That, of course, has nothing to do with major retirements. My testimony

along this line had to do with the pen areas. A major retirement in the pen area not covered by renewals which had reached the uniform stage, I would say would be a section or block of pens retired at one time. I would hardly confine it to a single pen, which is rather a small unit (T. 1868).

In determining the matter of the annual allowances to depreciation reserve, I do not think that the Secretary should give any weight to actual depreciation existing in the property or a comparison of the condition per cent as shown in Mr. Henrici's appraisal of 1932 with the American Appraisal Company's appraisal of 1922, that is, the comparison of the condition per cent of the property as found in those respective appraisals. The point I was making was that the physical condition determined for valuation purposes very probably has absolutely no relation to the accounting depreciation accrual which is made annually. It would be a coincidence if the two did agree at any time, and the great probability is that there would be no direct relation at all. Assuming that the same engineer had found the condition per cent of the property in 1922 to be 85, and in 1932 to be 85, and that he had a record of all that was spent during those ten years in repairs and replacements, no weight should be given to those two things taken together in determining the annual allowance which is necessary for depreciation reserve in the future. The physical condition, as the engineer determined it, would be a matter that would be a physical fact, but the records of replacements and renewals, of course, are matters which receive consideration in determining the rate (T. 1869).

My objection to a comparison of the condition per cent [fol. 1542] as found in 1922 and 1932 is not based on the fact that the appraisals were made by different engineers, but that would be an additional objection. As I understand that theory there would be no need for a depreciation reserve, if the facts as you have stated show that there was no change in condition per cent over that period. Now, that probably illustrates the point very clearly, that the depreciation reserve might be four per cent of the value of the property during that entire time and the very replacements and renewals that took place might exhaust the four per cent. It would be perfectly possible that that could take place; but the four per cent rate, if properly determined, might have been exactly the correct rate, but

the relation of those two physical condition per cents could in no way be used to determine the rate of depreciation. Assuming that between the two dates, 1922 and 1932, the same engineer had found 85 per cent condition and that the company had spent $500,000 in the ten-year period in repairs and replacements, I would not say that the average annual expenditure of $50,000 to maintain that stable condition should not be given any weight in determining the annual amount necessary in the future to accomplish the same purpose. It would have some weight (T. 1870), but the $50,000 a year only provided for such retirements as did take place, and possibly there were no actual retirements as such; there was no provision in there for future retirements of, we will say, even a larger property in 1932 than was in existence in 1922. There is something in addition to the $50,000 that must be added to provide for future retirements.

Paragraph 106 of the Secretary's order in this proceeding indicates that even though the condition per cent of the property were found by engineers to be the same, at dates widely separated in point of time, that there would [fol. 1543] be a need for depreciation reserve. The statement that I had particular reference to was the last sentence of that paragraph 106, and the relation of that to the constant condition the Secretary referred to as influencing his determination of a low depreciation rate (T. 1871). I stated that if I was going to use a study of actual experience to determine the amount of depreciation reserve necessary, that the study would have to cover a period of approximately twice the life of the longest lived asset. It would give a fair range, then, of these turnover periods of all items of property having varying service lives. Now, I can illustrate the point perhaps a little bit better by referring to Respondent's Exhibit No. 130. If I had carried Respondent's Exhibit No. 130 on to 120 years instead of 100 years, I would have reached the point where the maximum retirement of these pieces of property having various service lives would take place. That is, at 120 years we would get property with a 15 year life, 20 year life, 30 year life, 40 year life, and 60 year life (T. 1872). Everything would retire at 120 years all at once. Now, that would be the turnover period where we would get what might be termed the minimum condition just before retire-

ment and similarly the statement that I made referred to the maximum life. I believe I used about 80 years. Cast iron pipe, having an 80 year life, is the longest lived asset. When I say twice the life, I refer to twice the estimated life. Service lives are generally stated as average service lives, so that in a piece of property such as a cast iron pipe water line, there would be property retired at exactly 80 years; if the assumption was correct that there would be a portion of that property retired somewhat less than 80, and another portion retired at a period somewhat greater than that, but the average would be the 80 that was assumed. Before [fol. 1544] the ultimate life period was reached, the life might be demonstrated to be either too short (T. 1873) or too long, so that we would have to further vary the assumption to accommodate the conditions we found as to the actual life.

If the Secretary should use the actual experience method of determining the depreciation reserve, observation of the operation of the entire property for 160 years would give him the best basis that I know of. I think that method would be very inaccurate up to that time. I can explain why twice the life of the longest lived asset, rather than one and one-half times the life of the longest lived asset, should be used (T. 1874) in this way. The pipe line that we are speaking of that has a life of 80 years consists of joints of cast iron pipe generally 12 feet in length, which means a large number of separate pieces of pipe. After the expiration of one year, it is very possible that one of those joints of pipe has to come out and be replaced. That particular joint you take out has an average service life of 80 years. It may come out in one year or it may come out in 160 years. Now, we come on to the next joint, and possibly it will last 20 years before it comes out, and we replace it with a joint that may again last 20 years or 160 years, or only one year; and we go on to another joint that has the exact life of 80 years. When it is replaced, it again may have a life of 80 years, or 160 years, or one year, or 20 years. It is that combination (T. 1875) of lives that has to work out mathematically before you have a real true picture. It is a problem in calculus, that can be worked out with mathematical accuracy, showing the actual renewals upon renewals of a large number of similar objects (T. 1876).

When I spoke of depreciation reserve accruing to the point where it equaled the investment, and other times [fol. 1545] where it equaled the value, I probably had in mind an alternative base for depreciation. A great many books are made up on the basis of investment. This company's books are on the basis of investment. Now, the courts have stated present value as a basis for replacement, so that, at some future time, this company might use present values. I was just using the words as an alternative proposition. In all my exhibits for purposes of illustration, I used the investment of the company. I don't recall that I intimated at any point in my testimony that the Secretary should make allowances through depreciation reserve which would be adequate to cover not only the depreciation but also depreciation which has occurred in the past and for which the company may not have set up an adequate reserve in the past.

Adjusted service lives, as I have suggested, are all somewhat greater than those used by the company, which would indicate that up to this time at least that the reserve was adequate (T. 1877). It is my view that the allowance made by the Secretary should be sufficient for the future without any regard as to whether in the past the company has, or has not, set up sufficient, insufficient, or more than a sufficient reserve. The point that I wanted to make was a sufficient reserve for the future. In my opinion the rates, as I fixed them, would produce that annual allowance which was adequate to meet the future needs. The experience of the company with respect to the adequacy or inadequacy of the reserve it has set up in the past should be given weight in determining what is necessary for the future, only in this way. If the company had no reserve in the past, it would seem to me that property of this age should be protected by sufficient reserves in the future, so as to meet its ultimate return. As I stated, in my opinion, the reserve of the past has been adequate to meet the necessary [fol. 1546] retirements at the present time and provide a safe fund in the future (T. 1878). The investment, or the present value, as the basis for the determination of the depreciation allowance is the same irrespective of whether that allowance is computed on the straight line or the sinking fund method. The service lives of the various units of property would be the same, provided they are made

by the same man for the same purpose. There would be nothing about the adoption of one or the other methods of computing depreciation reserve that would cause one to change the estimated service life, and the annual rate of depreciation would remain the same. The actual amount allowed as an operating expense for depreciation reserve would be different if you used the sinking fund than what it would be if you use the straight line method, and from the time the allowance is made the two are distinct in character and use (T. 1879).

It is not a correct assumption that whether the allowance be made on the basis of the straight line method or the sinking fund method, that the reserve will be invested in outside enterprises, used in the company's own business, or paid out in dividends, because the use of the accrual that is made under the sinking fund method is confined absolutely to a definite earning, and it must be invested where it will make that earning. The use of the fund accrued, under the straight line method, is not restricted in any way. It can lie idle if the stockholders so desire. Assuming that the amount of $1,000 was set aside for depreciation reserve on the straight line basis, and $750 on the sinking fund basis, it could allow the $1,000 to remain absolutely idle if it wanted to. It would be the option of the stockholders what became of the money. There are a great many depreciation reserves that are represented, in part at least, by balances of cash maintained in the treasury of the company. Those bal- [fol. 1547] ances are not used down to the dollar; they are always left as a balance (T. 1880). I do not know of any company that takes its annual allowance for depreciation reserve and makes no use whatever of it. That would be the other extreme. The main point I want to make there is to show a distinction between the two methods of setting up a reserve; that the straight line reserve is the property of the stockholders without restriction; and the sinking fund is not the property of the stockholders to do anything with, other than to let it accumulate at the fixed rate of interest that has been provided. If the respondent here received $1,000 per annum as a straight line depreciation allowance, it may make use of it either in its own business to expend or improve structures or as working capital, or for the purposes for which the sur-

plus account is used, or to invest it in outside investments, but the distinction is that it is not compelled to, there are no restrictions on it at all. That is money that has been paid to it by the public to do with whatever it chooses. Assuming that the reserve is used and that it yields a return, that return belongs to respondent and it can do with it as it pleases up to the retirement of the property. The return is a matter of its concern only (T. 1881). If the company paid the allowance for depreciation reserve to its stockholders as dividends, and did not have the money to make replacements when the time for replacements comes, it would be considered poor business management, because the very purpose for which it has been accrued is to make these replacements. It is its responsibility, however, if it does do it. Referring to the $750 representing the annual allowance to depreciation reserve on the sinking fund method, used for illustrative purposes, it is my opinion that the company has got to invest that money just the same as though it was paid to [fol. 1548] a bank for deposit to bring in a stated rate of interest, and the company has no right to touch it or to do anything with it, other than earning that stated rate of interest, and then the return on that investment must be immediately reinvested so that it will compound and bring the necessary return. I think there is no designation as to the nature of the investment, but the fact that it must draw that interest is the controlling factor in determining the amount (T. 1882). It would not necessarily have to be invested outside of respondent's own business. It would be invested where it would bring in a return, but the return is fixed. If respondent kept it in its treasury and used it for working capital purposes, respondent would then be under the necessity of charging expense, the same as an operating expense, sufficient in amount to make up that amount of interest that was supposed to accrue annually, or semi-annually, or at whatever period had been fixed. Assuming that respondent needed to expand its pen facilities in order to care for its business, and that the expansion did not mean respondent was getting any more business or revenue but a different kind of business and needed more room, the $750 depreciation allowance on the sinking fund basis could be used for that, but respondent, theoretically at least, and, of course, the sinking fund is

strictly a theory, would be compelled to account separately for that $750, and to show the income and expenses in connection with the new pen area that was installed for the $750, and if there was any deficiency in the earning over and above the amount necessary to meet the interest requirement of the fund, respondent would be under the necessity of carrying through its regular operating expenses sufficient money so that the fund could be replenished at the proper time (T. 1883). I think that the accounting under the sinking fund theory should be entirely [fol. 1549] separate from all other accounting. That fund is not the property of the stockholder until it is paid to him to cover property retired, and it cannot be paid to him for property retired until it has accumulated through these compound interest additions enough to cover the retirement (T. 1884).

If the Secretary of Agriculture had prescribed this method, I would say that the Secretary of Agriculture was responsible for the accounting of the fund, and that the fund itself should be entirely separate as an accounting matter.

I do not have any exact record of what respondent has to pay in the way of interest for the money that it borrows, and I don't recall having any information that shows the rate of interest it paid for borrowed money. I don't know whether it could borrow money as low as 5 per cent (T. 1885). If it borrowed money and paid 5 per cent interest, that would be a financial expense to the company (T. 1886). If the company, instead of borrowing money from some outside source, used money that it had on hand, such as its depreciation reserve money, I think there would be a distinction between the two, possibly. The use of the money in its regular operations might be accounted for to the fund by an offset of the interest which might have been paid. It would have to be accounted for to the fund as an interest income to the fund. The company could use that money in its business and account to the fund for the interest on that money, and the interest would be an expense item that would have to be set up as a definite expense. Under the straight line method of setting up depreciation reserve, the company itself obtains the benefit of any income that is derived, up until the time of retirement. It has the funds which are its to use in any manner

in which it sees fit, and the principal of the sum, in theory [fol. 1550] at least, is sufficient to take care of the retirement (T. 1887). You do not need to add to that fund by income on it in order to cover the retirements, under that theory. Under the straight line theory, it is the company's own business to do as it pleases with the money which is the income on the investment. Under the sinking fund method the rate payer derives the benefit from the income, such as it may be, from the principal which is set aside, but the rate payers are paying on the undepreciated rate base when they do that. Under the straight line method, the depreciation must be present in the rate base (T. 1888). It is my understanding that the Secretary in his order in this case was considering a depreciated rate base in connection with determining his depreciation allowance (T. 1889). The Secretary in that order made an allowance of $102,000 to cover repairs, maintenance, replacements and reserve for depreciation, and stated in his order: "It is not necessary to decide whether the sinking fund or straight line method is the proper method of computation for there is a more certain and definite guide in the respondent's actual experience over the past 6 years, as outlined above." But that gets us back to the proposition of the rate base determined by the Secretary, which was a depreciated rate base. The Secretary prescribed rates on a depreciated rate base (T. 1890). The Secretary, in fact, uses a sinking fund method in determining the depreciation allowance, and the rate base is a depreciated rate base. The two cannot go together. The Secretary used practically the recommendation of the witness, that is the sinking fund. It certainly was very queer that there was such a coincidence, that is about all I can say about it. The Secretary did not allow enough to cover depreciation under the straight line method (T. 1891). Mr. Bachmann's recommendation in the former hearing was based upon the cost of reproduction new [fol. 1551] as agreed upon by the engineers. Now, there is a distinction between the basis of the calculation of the depreciation accrual and the value used for rate making purposes (T. 1892). The value upon which rates are based, if the sinking fund method of accrual of depreciation is used, must be the undepreciated value. In other words, the rates cannot produce the fair amount for the depreciation accrual unless they are based on an unde-

preciated basis or value. My position is that if you are going to use the sinking fund method to set up your depreciation reserve, then the rates themselves should be based on the cost of reproduction new and not the cost of reproduction new less depreciation. The rate base is as of the time of the investigation and not the date at which the Secretary's regulatory power became effective. I stated that the straight line method of setting up depreciation goes hand in hand with a depreciated rate base (T. 1893). For illustration; if the Secretary were to prescribe rates in 1933 on the basis of the cost of reproduction new less depreciation of $3,000,000, and ten years hence, without any additions to the property, he prescribed the rates on cost of reproduction new less depreciation of $3,000,000, so that in the ten year interim there has been no depreciation on the basis on which the Secretary prescribed rates, I would still say that there should be the straight line method used in setting up depreciation reserve. The sinking fund method and an undepreciated rate base would have to go together; they are not theoretically correct unless they do, but I do not think it is practicable and, therefore, it is improper in any event to use the sinking fund method (T. 1894). As a matter of theory it might be worked out, but I would not adopt it under any circumstances because of its impracticability. I do not agree with counsel for the Government that the whole difference between the straight [fol. 1552] line method and the sinking fund method of setting up depreciation reserve is comprised in the answer to the question as to whether the company or the rate payer shall profit by the income derived from the use or investment of the depreciation reserve money. I do not think that is the question at all, and I do not think that is the whole difference between the two theories (T. 1895).

As to whether the expiration of service life will be reflected in the existing condition of the property, the expiration of service life is a fact that exists, but in so far as it is apparent in the physical change in the property, that is another thing. The expiration of service life is perhaps not so noticeable as the wear and tear due to decay and rot. The problem of determining the proper allowance for depreciation reserve in respect to respondent's property cannot be the same thing as determining

the allowance for depreciation reserve for railroads, because for railroads (T. 1896) the Interstate Commerce Commission, which is required by law to determine the accounting procedure, fixes rules and of course any accrual for depreciation under those rules is controlled by the Commission. As I understand it, this accounting accrual that we are discussing here is not prescribed by any rules fixed by either the Secretary or by the law. I would not agree with you that the premiums paid on life insurance are in effect an annual allowance for a depreciation reserve set up against the life of a person. I do not think there is an analogy there. That is just an expense that is proper in any accounting procedure, and it is distinct from any depreciation allowance. I cannot see that the two are comparable at all, except that they are both items of expense. I go that far, and any maintenance charges are also an item of expense (T. 1897). The insurance theory is that the sum of all the premiums paid in, plus whatever earnings they accumulate, will fully meet what-[fol. 1553] ever losses occur and furnish a profit to the owners of the insurance companies. The insurance theory is that the premium paid by the insured, plus the income from the investment of those premiums and the reinvestment of that income, and so on, will provide sufficient money to pay losses when they occur. Their reserves are in part made up of investments. They usually carry large sums of cash also. Their total income is invested. If it happens to be income from securities, you probably could not distinguish it from income from premiums (T. 1898). It is a part of their business to be constantly paying losses and to provide for losses. As to wherein the procedure of insurance companies whereby they must keep moneys constantly invested and the income from those moneys constantly invested, and must, at the same time, be taking moneys out of those funds to pay losses, differs in its difficulty as an accounting problem from accounting in a sinking fund depreciation reserve, where you would invest and reinvest and take moneys out to make replacements, as I see it, one of the first things I would think of is that for a particular property the payment of the premium is not accompanied by any separate accounting for that premium to which it relates or to which property it relates. The premium is bunched with all the other premiums that

are paid in, and whenever a loss does occur, that comes from a general fund. There is no attempt to mark each separate fund by itself and see if it does accumulate enough to meet the particular loss on a particular property (T. 1899).

The regular earnings of the company are a matter of daily accounting, but the depreciation allowance is an expense item that is generally accounted for monthly. It comes as a deduction from the total earnings over whatever period is used for the accounting. If it is a month, it would be a monthly earning. In so far as the public con- [fol. 1554] tribution to the fund is concerned, the only place that this depreciation reserve money can come from is from the rates and charges of various kinds paid to the company from day to day by its patrons. In the straight line method that is strictly so. In the sinking fund method, it is partially so (T. 1900). If the sinking fund depreciation reserve allowance is made on the basis of investment every six months, that allows the company six months in which to accumulate the money to be invested. I do not know whether the company would have considerable money on hand which it would not be required to invest until the end of the six months' period of accumulation. That would depend on the nature of the earnings. If it was a prosperous period, it would have money. If it was a period of depression, it might be drawing on its working capital to carry on its operations. I know there have been fluctuations in the income from day to day and from month to month (T. 1901).

I read to some length from a report of the American Society of Civil Engineers in which they disapproved of the sinking-fund method of setting up a depreciation reserve. The membership of the society is made up of civil engineers engaged in the practice of the various branches of the profession (T. 1901). It is the largest society of engineers in the world and embraces engineers of standing in nearly all branches of the profession, as well as certain noted scientists. A great many members of the American Society of Civil Engineers are in the employ of regulatory commissions. The Interstate Commerce Commission has many of them, and various State commissions, with which I am familiar, have engineers who are members of this body. It might be in the society that the will of the majority governs

in the passing of resolutions and the adoption of reports such as I read from. That might be true. The opinion of [fol. 1555] the society is, of course, a matter of scientific study as to these facts. I recall the question in my direct testimony where I likened the allowance to depreciation reserve on a sinking-fund method to a patron paying less than the proper charge for feeding his livestock (T. 1902). As to the analogy between the two, it seems to me that the point there is that when a thing is paid for in its entirety, such as the service rendered in caring for stock or paying for hay, the transaction is completed; and that is the method followed in the straight-line method of depreciation. The user of the property has, in effect, paid for the prorata share of the life of that property, represented by the annual charge related to the expiration of this service life. Now, if he paid the Stock Yards Company only a sum for his hay which, if placed at interest and compounded even for a single year, would produce the proper revenue item for that hay, he would be doing exactly the same thing as he does under the sinking-fund method, the sinking-fund method providing that he shall pay only a part of the cost of property, and then let the fund pay the rest. The producer or the customer, in other words, has only paid a part of the expense, and the owner of the property has been compelled to earn the difference by another transaction.

Assuming that an asset has an estimated service life of 10 years, and the cost of reproduction new is $10,000 (T. 1903), if the depreciation reserve account is set up on the straight-line basis, the depreciation account will not exactly keep pace with the actual depreciation which occurs in the property. The physical depreciation and the accounting depreciation are separate things entirely.

With reference to the tax rates applicable to investments in depreciation reserve moneys on the sinking-fund basis, I am simply assuming that those are the percentages as determined by law, and that they should pay on earnings [fol. 1556] of that kind (T. 1904), without following through as to whether the taxes will be paid or will be remitted, or what adjustments will be made, but those, as I understand it, are the legal rates applicable. I do not know whether they will ever be paid. The assumption is that those being legal rates should, of course, be paid. If they are not paid, I would not go so far as to say that they will not impair the

investment, because, as I understand, those are the legal rates. If they were evaded illegally, I can understand why they would not have to pay them, but I do not understand that there was any suggestion of disobeying the law. If the Secretary, in setting up allowable expenses allows in the item "Taxes" an expense covering all personal property taxes paid, he deals with past experience (T. 1905). This testimony of mine relates to the future accrual of the sinking fund. Past experience had no such sinking-fund requirement (T. 1906). Respondent actually has money invested in outside securities, and I have shown that in Respondent's Exhibit No. 131. As shown by this exhibit, the average earnings for the year 1932 on respondent's investments in loans, notes, bonds, stock investments, and nonearning investments was 3.62 per cent. The first item in column 16, referring to the year 1932, is loans of $125,608.70 and the interest return was 3.69 per cent. A large part of those loans were made to Swift & Company. I think practically all of them. That interest rate is reduced to the annual rate (T. 1907). During the various years there were rates as high as 5 per cent and some as low as 3 per cent. The loans were actually for short periods, and so in order to get a comparable average for the entire year, they were computed on a yearly basis. For the year 1932 the lowest interest rate was 3 per cent, and the highest 4 per cent. The total return of $4,636.15 was made up of the [fol. 1557] sum of three amounts at 3 per cent, $706.67, $902.50 and $56.67. The balance of that sum was at 4 per cent, except for one loan of $50,000 for a short period, which had no interest allowance (T. 1908). That ran for 3 days.

Referring to Respondent's Exhibit No. 131 and the list headed "Nonearning Investments," they represent investments in stock companies which, during the period covered by this exhibit, did not render any returns. I do not know whether membership in the Grain Exchange and the Hay Exchange enables respondent to purchase its grain or hay on more favorable terms than it otherwise could and thereby constitutes in effect a return on the investment. The inclusion or exclusion of those items makes very little difference in the net result. It is shown by that line 10 what the figure would be if those items were omitted (T. 1909). The term "depreciation allowance" as used in my

testimony on page 1698 refers to accounting depreciation and not depreciation for valuation purposes. Accrued and actual depreciation referred to in the same sentence means depreciation that had actually accrued on the property and more. The accrued and actual, those two terms, taken together make up a portion of the accounting depreciation. We have to consider the actual depreciation and also the accrued expiration of the service life. The two together, plus obsolescence and other functional depreciation, make up the total allowance (T. 1910). Referring to my testimony on page 1698 in which I stated that the Interstate Commerce Commission, in its 1914 classification of accounts, made definite provision for certain depreciation accounting, and that the requirements of the Commission with respect to depreciation have been very definite, I would state that the method was not specifically set out in the classification. The Commission generally has approved [fol. 1558] only accounting on the straight-line basis. I have never heard of another method being used where the Commission had approved the accounting for depreciation.

Referring to page 1701 of my testimony where I stated, "Since these spreads are based on estimated service lives, it follows that on some units the charge or spread will be excessive, on others insufficient; but it is believed that the average obtained is fairly accurate; and, as data is obtained from time to time, the spread is checked up and, if necessary, corrected or some units terminated." That is the method which, in my opinion, should be followed, and I give effect to that opinion in my recommendations in this case by (T. 1911) examining all the records, and have discussed and recommended an extended service life. This company, as far as I know, has made no direct corrections since 1922. At that time, there was a slight change, I believe, in the rates that had been used for 1916 to 1922. By my statement on page 1702 of the transcript that, "The depreciation reserve, in itself, is a measure of the economy of the operation of a property, and the adequacy of the rates," I mean that depreciation reserve, after we have it effective at uniform rates for a number of years, shows the relation of the retirements and replacements to the source of the income, which is, of course, the rates and the reserve over a considerable period, and shows that the company has been

making its replacements as needed and keeps its reserve upon what might be termed "a stable financial basis." When I speak of measuring the economy of the operation of a property, I refer to the entire operation, in so far as it relates to maintenance. The adequacy of the rates, of course, provides the source for the depreciation reserve. If the rates were not high enough, the rate of return would be [fol. 1559] low, and it would be the policy of the company then to draw on surplus or some reserve to make up the difference until (T. 1912) it could secure higher rates.

With reference to my statement on page 1709 that if the repairs had not been made to the extent noted the ultimate service life of the property would have been materially shorter and either operating expense or depreciation charges would have been considerably larger, due to necessary retirements, I have made no estimate as to future repairs necessary to maintain respondent's property. I believe I did state that in so far as certain of the property is concerned, I think I had in mind the pen areas, the repairs of the property at the present time represented what might be termed "average repairs." Repairs of longer-lived property, however, I made no estimate as to what might occur in the future. If the company is limited to the expenses which it has made in the past in connection with its repair policy, I do not believe that the property will live out this estimated life. I think that the repairs on certain items of property will increase as we get nearer the expiration of the service life, but if those repairs are made as needed, I think these service lives are (T. 1913) fair and reasonable. As to the units of property on which I think repairs are increasing, the longest-lived property, the water lines, I believe that as we get near the expiration of service life there, we will find many more repairs are needed than at the present time, when the property is going along with a minimum amount of repairs. That would be true also of the larger structures, such as the Exchange Building and certain of the other property. The principal sources of failure of water lines is a leaking at the joints and a gradual rusting through some defect in the pipe. A perfect pipe would last a great deal longer than 80 years, but we know that in casting pipes, there are bubbles or other de- [fol. 1560] fects that may not be apparent for a great many years, which means that that portion of the pipe is thinner

than the other portion, so that the first rusting would take place at the thinnest portion. Now, the joint is generally a leaded joint; occasionally it is a cemented joint, and through various processes, possibly the action of water or traffic overhead would gradually lessen those joints so that after a number of years, we would find we had a leaky joint, which would have to be repaired, possibly without replacement of the pipe. In case of a leaky pipe, if the leak were substantial, it would have to be replaced (T. 1914). It is not always true that the amount of repairs increases on the units of property as they come nearer to the end of their service life. It is probably true on the long-lived property and not as easily discernible on the short-lived property. Very few units of property have heavy repairs during the first year. They usually reach an average state after several years' operation. On the long-lived property the heaviest repairs are required during the last years. That is not true of short-lived property. On the short-lived property, after it has operated a reasonable length of time, the repairs become fairly uniform.

In Respondent's Exhibit No. 122, referring to page 1719 of the transcript where it is stated, "I have shown in column 4 the recorded investment of the property retirement in each of the years (T. 1915), and in column 5 the accrued depreciation of that property up to the date of its retirement," I have taken the accrued depreciation as set up on respondent's books since 1922. Referring to page 1719 of the transcript, where it states that the retirements were actually covered by the depreciation accruals to the extent of 56.96 per cent at the time of retirement, that is because I started with the year 1922. Some of those units [fol. 1561] of property had been in existence for many years prior to that time, but there had been no depreciation accrued upon them other than I have shown here. The exhibit purports to show all the depreciation accrued during the company's existence on these particular assets. Between 1916 and 1922 no depreciation was set up for those assets, unless it is included here. I have in here whatever depreciation has been accrued on the books of the company since the date the property was installed that is directly allocable to those particular assets (T. 1916). I did not mean to state by any prior answer that there was

other accrued depreciation on these particular assets prior to 1922 that I did not include.

Referring to my statement on page 1725 of the transcript, "Thus, for any property retired before its service life has expired, there will be a greater differential in the accrued depreciation reserve under the sinking-fund basis than there will be under the straight-line basis (T. 1917). It is true that the accuracy of either the straight-line or the sinking-fund method, no matter which you use, is dependent on the accuracy of the estimates of the service lives for various units of the property; and if we assume that the service life estimated for any unit is wrong, then naturally the depreciation reserve allowance for that unit would be wrong regardless of the method of setting up the allowance, except as to the degree of the error. I think that we get not only the error in the assumption of service life, but we get a further differential in the sinking-fund method that we do not have under the straight-line method. With respect to the retirement method which you have spoken of as using past experience only, I think I would doubt whether that was a very safe method to follow. That would not involve estimated service life at all (T. 1918).

[fol. 1562] Referring to Mr. Bachmann's statement, "Now, the question of depreciation is divisible into two parts. The first is actual depreciation which results from wear, tear, rust, rot, decay, inadequacy and obsolesence, and the accrual of that actual depreciation in the asset itself to the extent of 100 per cent when it is retired. The second part of the question of depreciation is the provision which is made under managerial policy, and on the books of the company, and the accrual of this provision on the books to meet the actual depreciation which is being accrued in the asset" (T. 1919), the point I had in mind was the attempt to separate the actual causes of depreciation so that it would appear that they were divisible into two parts. Mr. Bachman enumerated all the causes under his first part, except that due to accident, and, in the second part, he brought in another factor which, to my mind, should not enter the discussion of depreciation especially under regulation, that is, managerial policy. I do not understand Mr. Bachmann's statement to be that the cause of depreciation has two parts; first the actual de-

preciation that is likely to take place; and second, the accounting means of providing a reserve for that depreciation. If that was what he intended, it is not clear to me. In my statement on page 1748, "The expiration of the service life of the units is an accounting matter only," I mean that is an accounting matter only because the expiration of a service life is not always an observable item. The naked eye cannot determine the exact expiration of service life merely by observation, but when we are accounting for it, we have a definite ratio we may apply (T. 1920). The expiration of service life, as I figure it, is simply the straight-line depreciation, the ratio of remaining service life to total service life, or the age to total service life.

Referring to the statement on page 1751, "It may be [fol. 1563] noted that under appraisals made in different years, there might be appreciation in condition per cent due to the introduction of new property through replacement," I did not know the amount of appreciation in terms of money as shown in Mr. Kosters' appraisal of respondent's property between the years 1929 and 1932. I recall that there was a greater condition per cent in the later years. I do not know how such an appreciation could have come about on this property (T. 1921).

Referring to my testimony on page 1754, "These can best be provided for through the straight line method of depreciation, since it is possible that the greatest accidents in the history of the company may occur during the early life of the units of property" and assuming an asset having a life of 50 years which was destroyed by accident within 5 years after it was constructed, the straight line method would more nearly approach the necessary retirement value of the asset, or take care of any accident that occurred before the true expiration of service life. We made an assumption of the service life for the use of either method, and as we go through the progress of years we are subject to this retirement by accident and at any time an accident does occur (T. 1923) we are better off under the straight line method than we are under the sinking fund method. That is the main point, and you are better off to the extent that the amount of the annual allowance under the straight line method exceeds the annual allowance under the sinking fund method. Referring to the

statement on page 1755 which reads: "The rate payers of today are not paying their proportion of the cost of property consumed in service," the point I was making there was that under the method proposed by Mr. Bachmann there would not be a sufficient payment by the rate payers to take care of the actual cost or proportionate cost of the property consummated year by year, due to the ex-
[fol. 1564] piration of service life. I mean that assuming an asset having a 10-year life that one-tenth of its life expires each year and the principal amount allowed to depreciation reserve under the sinking fund method does not represent one-tenth of the value of the asset. One year's use is only represented by a fraction of one year's cost (T. 1924). Referring to the statement on page 1755 which reads: "This is the only way that future retirements can be fully protected," and also to pages 1 and 2 of Respondent's Exhibit No. 116 which shows retirements of about $175,000 in ten years and Respondent's Exhibit No. 120 which shows a total of about $1,250,000 to be used for depreciation reserve and to my recommendation of $100,000 per year for depreciation reserve which will mean that $1,000,000 will be set aside the next 10 years, it would be impossible to say what assets are coming to the end of their lives to consume the approximately $2,000,000 within the next 10 years, but we have a property here that greatly exceeds the present depreciation reserve, and, since it is a fact that the retirements in the past have been of such minor importance, it is very reasonable to assume that as the years go on, the retirements will increase much more rapidly, and it seems that for that reason we should make this ample provision for that future retirement, because we are not going to reach 100 per cent of our investment even under the $120,000 per year, because, just normal retirements would keep that down. We cannot know whether respondent's assets are such that $2,000,000 will be needed for retirements during the next 10 years, but I haven't limited it to 10 years. I am limiting it to the life of the property as a whole which is a great deal longer than 10 years (T. 1925). As to whether there would be $3,800,000 in the depreciation reserve and
[fol. 1565] what property would be retired to require all that amount, in the first place I think we are getting the matter a little confused because that reserve, after that

period of time, would not reach any such figure as you have stated. You are making the assumption that the reserve would go absolutely untouched and would accumulate at this rate until it reached that figure. Now, that is impossible under any theory of accounting that is properly carried on with respect to depreciation. There is going to be a large amount of that reserve extinguished through retirements and replacements. So that we are starting over again to accrue depreciation on property that is installed during replacements, and, if you refer to Respondent's Exhibit No. 130, that diagram shows that violent fluctuations might take place if retirements came at the exact expiration of the service life assumed. In place of the present accrual, you might have a major retirement of the entire Exchange Building, or some figure of that kind which would pull it down. If you will refer to Respondent's Exhibit No. 128, I can illustrate there very clearly how this depreciation reserve would work on the basis that I have assumed it. The assumption made in that exhibit is that we started with no balance in the reserve in (T. 1927) the year 1923. I have used the actual retirements that the company has made in that length of time, that is, the length of time from 1923 to 1931, and I have shown that over that period, taking account of retirements, insurance, salvage, and the annual accrual, we would reach a balance of $708,479 at the expiration of 1931. Now, those retirements were what might be termed the minimum that might be expected over the next cycle of years, but the reserve would certainly not accumulate any faster than that, even with that amount of retirement; as we go on, however, there may be much [fol. 1566] greater retirements which would materially reduce the reserve.

Comments on Councilor's Testimony in Prior Hearing

I have read the testimony of Mr. Councilor at the former hearing which appears on pages 359 to 404 of the abstract of testimony that includes both direct and and cross examination. As to whether any difference in the principles recommended by Mr. Councilor and by myself for the guidance of the Secretary in the determination of the depreciation reserve allowance, I find that a great many of (T. 1928) the statements made by Mr. Councilor agree exactly with

my thoughts in the matter. There were many cases where I was uncertain as to what was meant. The general drift of the testimony, however, seemed to support my theories. I would say that there were a few places where I partially disagreed with Mr. Councilor's testimony where the matter was not clear. I notice on page 362 of this abstract at the bottom of the page there is a statement regarding renewals, replacements and repairs. That partially agrees with what I have said. I probably went to a little greater length in describing that. I do not specifically disagree with that as a general statement. It is not specific enough however. At the top of the next page was a statement that renewals would be charged against the depreciation account, but there are some exceptions. I do not know just what is meant by that (T. 1929). On page 363 at about the 7th or 8th line, the statement is made: "Depreciation, as carried on the books, is intended to represent the use that has been made of the property to the extent to which it has been deteriorated by that use." Now, I think that statement might have been enlarged upon a great deal. That state- [fol. 1567] ment might be misinterpreted as to what is meant without a specific explanation. On that point my testimony already given makes my position clear. In the middle of page 364, the statement is made: "For example, the sinking fund method is a compound interest method, which distributes lighter charges during the early years of the life of an asset and heavier charges during the later years of its life." Now, I do not follow that at all, because, under the sinking fund method, as proposed in this case, the charges, in so far as they represent an expense to the Stock Yards Company, are equal throughout the various years of life (T. 1930). I tried to follow the paragraph on page 366, down to the last sentence, where it says: "If that is done, there could be none of this amount which could be earning any income to be added to the principal sum." And that is not clear to me what was meant there. On page 370 there is a statement that it seems to me is slightly in error, about the middle of the page, the sentence beginning "What I meant a moment ago when I said it depended on a question of rates was that over the life of the property exactly the same amount would be recovered by the tax payer and allowed as a deduction under one method as would be allowed under another, but, under the sinking fund

method, the heavier charges would come in later years." On page 375, where Mr. Councilor stated he had never examined the books and records of the St. Joseph Stock Yards Company, I call your attention to the fact that I did examine those. As to the statement on the middle of page 378, about the 4th line: "A company that is well managed will allow the amount to remain in its business", I don't believe that is necessarily true. I presume Mr. Councilor was referring there to depreciation reserve moneys when he said "amount" (T. 1931). It is not necessarily true that [fol. 1568] the company would leave depreciation reserve moneys in the business. At the same page, 378, this statement was made, that he did not know what respondent is earning on its other investments. I put in an exhibit showing that in this case. There was a part of the discussion on page 380 regarding reappraisal and the point, I think, was not brought out there that reappraisal might cover property, that, through some accounting, had been charged to operating expenses instead of to capital account. That happened in old companies, particularly (T. 1932). On page 382, the first full paragraph: "The purpose of a depreciation reserve is to reflect the accrued depreciation existing in a property," I assume that that is confined to accounting depreciation and not to valuation methods. That is not clear there. The point in mind is that the purpose of depreciation reserve is not to reflect existing depreciation such as found by Mr. Kosters and Mr. Henrici in their valuations but is merely the accounting depreciation such as I have described. The entire page 383, there is a statement regarding fair return, and so forth, that is not quite as definite as I tried to make it in my testimony. It would be hard to pick out the exact spot where it differs. I think there is a similar variation from some of the theories I expressed. I think some of our discussion this morning related to the matter discussed on page 388, beginning on the third line: "I said I would use the same basis for depreciation purposes as I used for the return." I think I made that clear this morning. I did not agree with this statement I have read of Mr. Councilor (T. 1933). The only way I can interpret the sentence, "I said I would use the same basis for depreciation purposes as I used for the return" is that it means Mr. Councilor is using exactly the same depreciation base as rate base. I do not believe that

is correct. The rate base is cost of reproduction less de-
[fol. 1569] preciation, or some figure having that as its principal element, and the basis for depreciation is either greater than reproduction cost of the investment or some similar item. The same point is covered at the end of the next paragraph on page 388. On page 389, it states: "I have not been down to the St. Joseph Stock Yards." I think that I have described my visits to St. Joseph Stock Yards on a slightly different situation than Mr. Councilor. On page 390, the first paragraph, beginning about line seven (T. 1934) or eight: "The difference between those figures and the depreciation shown on the books would seem to indicate that the depreciation written off heretofore was in excess of the depreciation actually accrued," I could not agree with that, except the definition of depreciation as consisting partly of expired service life. It seems to me that the depreciation accrued might coincide with the expired service life. On page 391, I have a note on the margin of my copy that there are too many "ifs." That was about all I could criticize that one. Page 393, there is a discussion of the extent to which the history would enter into the determination of the rate, and I think I discussed that in showing the extent to which the actual history of the company should influence the proper determination. Page 395, about nine lines from the bottom, the statement is made: "Ordinarily the life of the item which is installed as a repair or replacement is not taken so much into consideration." That largely depends on the size of the item, I think. On page 397, the second paragraph from the end states: "That comes about because the annual charge is arrived at by taking each year the theoretical addition to the principal of the sinking fund, plus the theoretical accruals of interest on all prior accruals, therefore, the amount of the annual charge increases from year to year." [fol. 1570] Now, that statement is nearly misleading because (T. 1935) the accrual on the sinking fund basis is made up of two parts, one part is the straight charge and the other part the interest. The public is the one that is interested in the straight charge, and the interest comes from the earning of the fund, and is not a direct charge against the public. That, very hurriedly, I think, gives the general exceptions that I took to this statement. The underlying principles there are pretty close to what I have

testified to. These specific instances with perhaps a few others, would be some exceptions.

Redirect examination:

I have made an entirely different approach to the study than that made by Mr. Councilor. I was very particular to avoid any study of what Mr. Councilor had done before I started my work, and did not give any consideration to his testimony until I had finished all of my work. I took his testimony to be simply an accountant (T. 1936) brought into the case to study general principles applicable to this situation. I have made some examination of the physical structures of respondent and of its books and accounts. I was attempting by an individual investigation of my own to fix the service lives of the principal parts of this property. As I understand it, none of these things were done by Mr. Councilor, according to the abstract of testimony.

I secured a copy of Government Exhibit No. 121-A in Washington about December 15 and was allowed to keep it until January 4 or 5 (T. 1937). I accepted the figures shown in that exhibit and used them in some of my exhibits. In addition to the time actually spent at St. Joseph, during that time I outlined data to be sent to me by the company from its books and accounts, including a great deal of pre-
[fol. 1571] liminary information and at various times I corresponded with the officers of the company requesting additional information. Some of that was not received until as late as the time of this hearing. I was receiving it nearly every day from about December 15, until the first of January. I consider my own examination of the books, the report sent me by the company, the Government audit, and my examination of the property were adequate for the study I was requested to make and that I had spent sufficient time on this case to make all the preparation that was needed (T. 1938).

I was with the Interstate Commerce Commission from 1914 until 1928. The railroads' property, while it consists of large numbers of items, includes property constructed of similar materials and in many cases very similar in nature to that owned by the St. Joseph Stock Yards Company. The railroads have in their inventories large amounts of property represented by pavements, water lines, sewers, brick and frame buildings, and to a large extent, stockyards.

They also have equipment similar to the equipment owned by the St. Joseph Stock Yards. Railroads do own several of the largest stockyards in the United States, such as the one at Buffalo on the New York Central Railroad, and the ones at Pittsburgh and Detroit (T. 1939). In mentioning the stockyards properties I have examined in one way or another, I inadvertently missed the one at Portland, Oregon. I have been over that property in connection with their railroad which is known as the Portland Peninsula Terminal Company. The stockyards are owned by the same people as the railroad, and at the occasion of my employment by the railroad company, I also went over the stockyards in some detail. In order to make the study I have made and presented in this case I do not believe it is hardly necessary to have handled livestock in a stockyards or to have managed a public stockyards. I made inquiry [fol. 1572] and could find no one that knew that either Mr. Henrici or Mr. Bachmann had ever operated a public stockyards (T. 1940). Referring to my testimony on cross examination where I stated that railroad ties were being retired and replaced by ties of a greater service life, and assuming that the old fashioned tie with the 10-year life was replaced by a tie with a 20-year life, in so far as the new ties were introduced into the property, they would carry a five per cent depreciation allowance each year until they had completely wiped out the old ten per cent tie, so there would be a gradual change in the average rate of depreciation accrual, depending on how rapidly the new ties replaced the old. The ten per cent accrual would be maintained on all ties that were of the ten year life and the five per cent accrual would begin on the ties which were of the 20 year life, so that the average of the whole would vary from ten until it reached the five, as the years went on. There would be no particular accounting difficulty about that. It would just be a composite accounting study (T. 1941).

If I came out here at the end of the 50-year life of the Exchange Building and found it had been retired at the end of 40 years, the straight line method would more nearly fit the facts in that case and provide an adequate reserve for the retirement of that building (T. 1942), for the reason that the annual accruals during the period of 40 years would produce a greater sum in total under the straight line method than they would under the sinking fund method.

The sinking fund method, even if the investment had bought in the interest as required, would never reach the total retirement value of the structure until the full elapsed time had been reached. Giving more weight to obsolescence would tend to decrease the service lives which I have set up in my exhibits and would call for a greater accrual to the [fol. 1573] depreciation reserve. No particular weight was given to obsolescence. If it had been, I would, of course, have used shorter service lives than I did use (T. 1943). Mr. Henrici gave the Exchange Building a life of 40 years, while I gave it 50 years. I have examined Mr. Henrici's testimony to determine whether he gave weight to obsolescence and all other factors commonly comprised within the description "depreciation." Mr. Henrici figured 35 years as the service life for brick garages, while my estimate was 50 years. I do not think the depreciation already accrued on the Exchange Building has been excessive at the present time. I covered that, I believe, in part at least, in my direct testimony, on page 1780, indicating that possibly one-half of the service value of that building has been accrued, and I do not believe that is excessive for a building of that age (T. 1944). In fixing service lives for all the property in the inventory made by Mr. Kosters, I included all property that he included as used and useful, so that, in fixing depreciation, I did not have in mind that any of that property would be other than used and useful during its service life, and, for that reason, the prospective or possible retirement, due to the determination of the Secretary, would have no influence on the determination of service life, as I made it. I am aware that Mr. Christensen recommended that the Transit House be found not used and useful. For that reason I did not make the service life of the Transit House any less than I would have made it otherwise (T. 1945). I gave it a service life of 50 years, the same as the Exchange Building and the garages. It would be a practical impossibility from any economic business standpoint for respondent to further maintain a property originally used and useful, but upon which a fair return is not now allowed. If respondent is required by the nature of its business to [fol. 1574] maintain Packers Avenue but is allowed to earn only one-half the value of the property that would simply be an economic loss. The company would be spending money there for which it received no return. Those are all factors

that ought, in some respects, tend towards a fairly liberal rate of depreciation reserve. They are factors that should at least receive consideration in determining the fairness of a reserve (T. 1946). I have not used them in my determination of service life. The service lives that I have used are based upon the theory that all those properties will continue to have a useful life. I have examined the life tables and testimony of Mr. Henrici, and the testimony and exhibits of Mr. Bachmann and I could find no separations by percentages or amounts for the hazard of obsolescence, the hazard of inadequacy (T. 1947) or the hazard of accident, etc. It has been suggested upon cross examination that the Government's audit shows the experience of respondent in connection with repairs for a period of 6 years. My repair statement included the years 1922 to 1931, inclusive. I do not consider a study of six years a sufficient study to determine the probable amount required during the life of the property for replacements, repairs, renewals and retirements, as that is not representative of what may be expected in a long-lived property. It is entirely too short a period from which to form any definite conclusions. In determining my life tables I gave no weight to the abandonment of factory buildings due to expansion, changes in mechanical arts, etc., nor to the abandonment or disuse of similar properties on account of insolvency. If country buying of livestock or other conditions should ultimately decrease the business of respondent, or force its retirement (T. 1948) from the stockyards business, the depreciation reserve should be sufficient to make good the investment during the useful life of the property. That is one contin- [fol. 1575] gency that might be apparent in the future, and any reserve that is set up must meet such contingencies, if it is in any way possible to anticipate them. At the present time, it might be said that you could not anticipate that particular contingency with any degree of certainty, but, 5 years from now, the situation may be different (T. 1949). I have not taken such a contingency into account in fixing the service lives of property in my exhibits. I have not included that as one of the elements to which I would give weight. However, I did consider a possibility of that kind when I studied the company's depreciation reserve, and I consider that that is one factor which must govern any analysis of the reserve as it stands today. The straight

line method more nearly meets any contingency which brings about an expiration of service life at any period short of the predetermined total service life.

The base would be the same under both straight line and sinking fund methods of accruing a depreciation reserve in that it would be the cost of reproduction new (T. 1950). The service lives of the individual units would be the same. As to whether the annual rate would be the same under both methods, we must draw a distinction by defining what we mean by rate. Under the straight line method, the rate of depreciation is simply that fraction of the total accrual represented by one year's accrual, and under the sinking fund method, the rate is always less than that particular factor, because we have an additional assumption that the amount accrued annually must also start earning interest, so that if under the sinking fund method we had an annual accrual of $750 and under the straight line method we had an annual accrual of $1,000, it might be said that the rate under the straight line method was ten per cent and under the sinking fund method was really 7½ per cent (T. 1951). [fol. 1576] Assuming that respondent should earn a fair return and must in addition earn the annual interest charges on the sum allotted to the sinking fund and that there are no expansions or additions to respondent's plant, the only way the annual accruals under the sinking fund method could be used in respondent's business and could succeed in earning a fair return plus 5 per cent as an interest charge on the annual accrual would be for working capital. In that case the fair return would have to be greater than the fair return if there was no such assumption of use. Working capital is a separate item in appraisals of property, provided for in and of itself. If it had been provided for as a part of the investment there would be no necessity for using the sinking fund in that connection. As a practical matter there would be no use for the sinking fund at all (T. 1952). If the sinking fund were used instead of the working capital, it would mean that the working capital would not be working which would be an economic loss. If the annual accrual were used in the business and that succeeded in receiving no more than the fair rate of return on the property the result would be that your fair return would have to be increased, because you would have an additional expense item that would cover this earning of interest that would be required

under the sinking fund method. If the rates cannot be increased it would be an additional loss to the stockholders. That is, the amount necessary to set aside as the interest earnings on the sinking fund accrual would in effect have to be subtracted from the fair return. The money so used would be subject to all the hazards of the business (T. 1953). Assuming that respondent used the money for a needed extra block of hog pens, the money so used would be subject to all the hazards of the business as to earning power. If the additional block of hog pens did not earn 5 per cent again the stockholders would suffer because there would [fol. 1577] be an additional expense item that would have to be added to the fund to keep up the normal accrual of this compound interest. Putting it another way, the accrual of the compound interest would, in effect, have to be subtracted from the fair return, [illegible] there happened to be a further deficit in the fair return, the stockholders might have to go into their pockets to fully comply with the requirements of the sinking fund (T. 1954). In respect to my cross examination about the analogy between the sinking fund method and the practice of insurance companies in accruing the amount they will pay to policy holders, I do not know of any insurance company that will issue a policy based upon the proposition that it will accept money from a policy holder and give him back at the end of a stated time an amount equivalent to his annual contributions, compounded semi-annually at 5 per cent. The most liberal policy with which I am familiar would be much less than that. The endowment policy usually pays the sum paid in plus about three per cent of straight interest. To be an exact analogy it would be necessary for the insurance company to guarantee to the policy holder his annual contributions plus compound interest at the rate of 5 per cent compounded semi-annually (T. 1955). I have never heard of any such policy. Insurance companies in the last five years have invested large sums in farm mortgages and railroad bonds. In some States those investments have been safeguarded by laws requiring the investment in what were supposed to be very sound and conservative securities. The result of such investments has been that the insurance companies have now in their portfolios, as they are termed, large blocks of railroad bonds which are no longer considered proper investments, for the reason that the interest has been de-

faulted. They also have large investments in farm mort-
[fol. 1578] gages and city building mortgages, upon which a percentage at least has been defaulted as to interest. It is common knowledge that as to the latter two classes of investments, they are now frequently unable to obtain either principal or interest (T. 1956). They were considered legal investments for the insurance companies in the States which have those provisions in their laws, governing such investments. I could hardly expect that respondent could do as well as an insurance company of a high grade in making its investments over a long-term period. In so far as I know, the insurance companies represent probably the largest investors in income-producing securities of any group of investment concerns in the country. They ordinarily have as a part of their executive force men who are supposed to be skilled in finance and investment matters. The investment feature of insurance companies is one of the important factors that are of interest to the policy holder. It is the result of the investment of his premiums which makes it possible for the insurance company to pay out at the expiration of the policy, or at the death of the policy holder (T. 1957). The alternative to investing the sinking fund in respondent's own business would be on the outside in some form of safe and sure returns. It would depend on the particular conditions at the time the investment was sought, whether it was thought best to invest it in one type of security or another, or even in mortgages. It would, of necessity, require them to become investment bankers as well as a stockyards company, so that they would be carrying on two businesses, where before they were simply carrying on one. I have heard of no investment banker or person doing an investment business who will accept my money and give his own guarantee of a 5 per cent return for each year out of 25 years without any loss and without diminution during that period in the selling price of the security bought. He
[fol. 1579] would probably not be considered a good business man and would probably go out of business (T. 1958). It is a necessary assumption that the expected interest be obtained each six months and that the market price of the securities shall remain equal to that which is purchased because if the fund is to be drawn upon for retirements at any time, we must expect to withdraw an amount of the

original investment. Otherwise, we are crippling the fund by the amount of the discount you have to suffer when you cash these securities. Even granting that the bonds should not be defaulted as to the principal, it is not merely sufficient to maintain the interest rate. Assuming respondent under the sinking fund method had bought a bond at 100 a year ago which had paid 5 per cent interest and at the present time it needed to withdraw that bond to replace something on its property but the bond, though still paying 5 per cent interest is selling at 90, the sinking fund is immediately crippled to that extent. There are 10 points off on the selling price of the bond that must in the future be made up under some other scheme. The rate of accrual could be increased which would, in the long run, perhaps, bring the annual accrual up to the straight line accrual that might have been used in the first place (T. 1959). To the extent that a security may be, at the time it is to be used, below the price at which it was purchased, the theory of the sinking fund will fail to bring about the expected result. There would be no such obstacle in connection with the use of the straight line method. In Respondent's Exhibit No. 131 I gave the average return over a period of years of certain investments made by respondent. Those are what might be termed "gross returns" with no deduction for taxes of any nature. I stated the amount approximately by which that income would be reduced due to such taxes. It would be contrary to reason and law to assume that in setting up a sinking fund you would not be required to pay taxes estab- [fol. 1580] lished by law (T. 1960). If this sinking fund is to be established for the future that phase of it would not be sufficiently taken care of if the Secretary merely allowed the taxes that had been paid by respondent in the past because that bases the entire allowance on past experience and takes no account of this additional tax burden which is going to be present in the future. There is no such experience in the past. Assuming the sinking fund were adopted, the return would have to be large enough to cover the contingent expenses such as taxes. In addition to the interest earned, there must be provision for expenses in connection with that interest. Referring to my cross examination respecting Respondent's Exhibit No. 122, I want to emphasize the fact that the depreciation accrued to date of retirements, as shown in column 5 of this exhibit is the total ac-

crued depreciation of record, on the Company's books, up to the date of retirement, and is not limited by the first date shown on the exhibit, that is, 1922. Some of this accrual goes back to the beginning of the Company's depreciation accounting which was in 1916 (T. 1961).

Referring to my cross examination on the necessity for using the straight line depreciation with the depreciated rate base as compared with using the sinking fund with an undepreciated rate base, the distinction that I was making was between the rate base and the depreciation basis. On both methods, the same basis, that is, cost of reproduction new, is applicable as a depreciation base, but if we base rates on a depreciated rate base, we cannot use the sinking fund method as a method of accruing depreciation (T. 1962). That is because the investment would not be kept unimpaired under that method. The investment is impairing as soon as we consider cost of reproduction less depreciation, and we must accrue then, under a method which will pro- [fol. 1581] vide the full cost of reproduction new. The theory of fixing rates upon a depreciated rate base is based upon the assumption that the present user of the property should not pay on the value that has passed out of the property prior to his use of it. If that theory is followed out and the sinking fund method is used, it results in the owner really having his property confiscated because he does not receive the full compensation for the impairment. I quoted one or two authorities in my direct examination on that point (T. 1963).

My recommendation for a depreciation accrual of one hundred thousand dollars per year on respondent's property is based, in so far as it is possible to do so, upon a study of respondent's records, its past history of retirements and replacements, coupled with my own best judgment as to the service lives of the property which have not yet been retired or replaced. Assuming that a utility may in the past have had what we may term excessive earnings, or earnings above the minimum that might be prescribed by law prior to the fixing of rates by authority, those excess earnings in the past may not be balanced off by making less than a fair return in the future (T. 1964). The amount the company has earned has become its property. My answer would be the same as to a depreciation accrual in the past years. Assuming the Secretary was to

fix rates for the future, in my opinion, the depreciation reserve should be fixed entirely in regard to the future needs of the company and what has been done in the past is a matter of water over the dam and cannot be compensated for in any adjustment of future rates (T. 1965). As a result of my study of the factors entering into a depreciation determination, I am of the opinion that the past accrual in no way should influence the fair accrual for the future. The only consideration given to the past accrual would be in the study of its efficiency of service lives for the future, and, in so far as that enters into it, there would [fol. 1582] be a determination of (T. 1967) the future, depending entirely on what was found to be the prospective service life. There would be no offset due to what had been done in the past. My opinion is that the average actual normal currently accruing depreciation in respondent's property over its service life is at least $100,000 per year. Any less amount will not be sufficient to enable respondent to make good its depreciation and replace the parts of its property when they come to the end of their life, nor keep the value of its property investment unimpaired so that at the end of any given year the property investment will be equal to the original investment or value. Based upon my studies of this property and the records of respondent, $50,000 a year would in my opinion be insufficient on any basis to keep the property investment of respondent unimpaired so that at the end of any year the investment in or the value of the property at the time of rate making would continue unimpaired (T. 1968).

Recross-examination:

Referring to the testimony on page 1921 of the transcript in which is set out questions and answers concerning the amount of appreciation in the property of respondent as shown by the appraisal of Mr. Kosters made in the year 1929 and in the year 1932, I have now read Mr. Kosters' testimony (T. 1969-70). The testimony itself does not indicate in terms of money the extent of the appreciation, but indicates a difference in condition per cent. I did not examine Mr. Kosters' appraisal for the respective years. As to how the appreciation could have come about in respondent's property in the period of 1932 as compared with 1929, I can only state Mr. Kosters' reason for the

apparent difference, as stated on page 1539 of the record [fol. 1583] where he states: "Oh, I am not attempting to justify anything Mr. Burnell said. I am very frank to acknowledge that the approach which I had in 1929 was entirely different than the approach which I had in 1932. I justify that by the simple statement that I have lived three years and I think learned considerable in that interim." I think that explains very briefly the reason for a possible difference in condition per cent (T. 1971). I would hardly put the interpretation on his testimony that his experience since 1929 has taught him how to find a higher condition per cent. I think the method of approach has a great deal to do with the determination of the condition per cent. I pointed out, I believe, that Mr. Henrici stated a variation of as high as 25 per cent between the determination of the different engineers. Now, it is very possible that each of those engineers had a different method of approach and would obtain a different result. Mr. Kosters testified that he had a different method of approach in the later year than he did in the earlier year. That might very easily account for the entire difference. I don't know that I could state that there is nothing about the situation which indicates that the property has actually appreciated in its condition, because property appreciates, when extensive replacements are made, provided the amount of the new property installed is in excess of the depreciation of the old property. It is merely a question of fact that will develop after an examination of replacements and renewals (T. 1972). When replacements are made, the condition per cent would rise immediately, when a new property enters into the composite structure. As to whether any additions, betterments, or replacements have been made in respondent's property since 1929 which would account for the $200,000 appreciation in its condition, I cannot think of that in terms of money for the reason that that gives no consideration to price-changing. An appreciation of $200,000 would be perfectly possible [fol. 1584] with the same condition per cent in two different years. That might be accounted for by price changes. Costs of material and labor at the present time are lower than in 1929. We do not know, however, that all material and labor and all equipment have gone down. We are speaking of averages. There is always the possibility of an adverse change in the price of any material. I am just

stating this merely to show the uncertainty of determining by dollars and cents what appreciation is (T. 1973). In general it is undoubtedly true that as between the date of the 1929 appraisal and the date of the 1932 appraisal, the very materials appraised have gone down and the very labor appraised has gone down. As to your statement that that could not possibly account for the appreciation in condition, I don't like to tie it right down to possibilities because there might be one single item in property there that did not follow the general trends that you are referring to. If there be one single item of property or one material which went up, it is just a possibility that that would change the factor when the appraisal showed that, taken as a whole, the material items and labor items were lower. I said I did not want to tie myself down to an actual fact there because there is that adverse possibility that it might have in it. Speaking of the $200,000, it would be ridiculous to assume that if the appraisal showed that the total cost of materials in the stock-yard properties are less in 1932 than they were in 1929, the fact that one single material cost more could account for that appreciation, but there might be a change along the lines indicated. It is possible. In other words, it is not impossible (T. 1974). I had nothing to do with the making of Mr. Kosters' appraisal and I have not investigated it in any way to determine whether it is right or wrong. I would not attempt to pass on it at all without an investigation.

[fol. 1585] I know that a number of years ago the Buffalo, Pittsburgh and Detroit stockyards were owned by the railroad companies (T. 1975). Those operating companies were occasionally considered as distinct from the railroad operations, but in so far as ownership is concerned, it was railroad property. So far as I know, it is still railroad property. I haven't investigated recently. There may have been separate operating companies. The property, however, was still considered as being railroad owned. By "separate operating company" I mean just the same as any outside interest of the railroad. At one time, the railroads owned coal mines and they operated those with independent organizations, but the railroads owned them, and they were required to get rid of those. The railroads have owned various steamship companies, which have been operated as a separate corporate entity, but they were still

under stock ownership by the railroads (T. 1976). The operating companies of the Pittsburgh, Buffalo and Detroit stockyards may have been subsidiaries of the railroads that owned the stockyards. It has been some time since I knew anything about it at all. It is just a recollection that I have. They may have changed in recent years for all I know. At the time I had some experience with these railroads which owned the stockyards, I did not have anything to do with the inventory of the stockyards. At the time I was with the Interstate Commerce Commission I was in a civic district. As to whether the fact that certain railroads owned the stockyards at Buffalo, Pittsburgh and Detroit has had any connection with my experience, it seems to me that the pricing of property of a nature such as enters into stockyard construction qualifies me to some extent to pass on that property if it happened to be in the stockyard (T. 1977). The railroads used property similar to that inventoried for the St. Joseph Stock Yards and I had some 14 [fol. 1586] years' experience with railroads all over the United States, valuing them and determining depreciation and reproduction costs, and included in this railroad property was certain stockyard property. I was, therefore, familiar with the stockyard materials and property in so far as they were owned by railroads (T. 1978). I did not inventory the property used in the Buffalo, Pittsburgh, or Detroit stockyards, and I never studied the operation of any one of those stockyards, and I never made any study to determine the need for depreciation reserve for any one of those stockyards. I did not inventory the stockyards at Portland, which is a small yard. I examined its condition, that was the principal object and it was exactly in the same class as the stockyards at Fort Worth, Sioux City, and St. Paul, that I examined at the time I handled their railroad cases before the Interstate Commerce Commission. This was a little different form of case at Portland because it was preparation of a report to the Interstate Commerce Commission that entailed the examination of the land situation and the general layout of the tracks with respect to the yards (T. 1979).

I think that I was using the wrong figures when I said that approximately one-half of the service life of the Exchange Building had been accrued in the depreciation reserve. The accrual of depreciation now of record on the

company's books dates from 1916. That has been a period of 16 years. With reference to my statement that it was impossible for respondent to maintain and use a property on which a fair return is not allowed, I think the statement with respect to Packers Avenue illustrates that point, the company being required to maintain that street must of necessity be under an expense. Now, if that property is not included in the rate base, there is no possible way that the [fol. 1587] company can meet that expense except to go down in its pocket. There is no earning that would come to it through that Packers Avenue. That refers to the one-half of Packers Avenue about which I was testifying. As an economic proposition, if the patrons of respondent are not made to pay a return on both halves of Packers Avenue, it would be impossible (T. 1980) for respondent to continue to maintain and use more than one-half of Packers Avenue, unless it would be just charity and they dig down in their pockets and pay this money for the maintenance of the other half. I presume it would be charity to the users of the stockyards who would get the benefit of it. I don't know that the packers who front on one-half of this avenue could be made to pay for their use of it. Packers Avenue is considered as an adjunct to the stockyards. It is their property, as I understand it. I presume that they can close it when they see fit, but that probably would be a question of law as to how long it had been operating as such. The Transit House is another example, of course, of that same proposition. If the Secretary of Agriculture should say in his order that he was not going to (T. 1981) compel people who patronize the stockyards to pay for that privilege enough, in addition to the cost of that service, to maintain the Transit House, and as to whether that would prevent respondent from using the property as a hotel and getting what return on it it is capable of making as a hotel, the point is that the record is clear that it is not a paying proposition by itself. It has to be considered as a part of the property of the stockyard as a whole in order to warrant its existence. I know of no reason why the rate of return on the Transit House by itself should change due to an order of the Secretary (T. 1982). As far as I know, that would have no influence on the actual business [fol. 1588] of the Transit House. It seriously affects the operation of the Stock Yards Company, however, from a

revenue standpoint. I think that the exclusion of the hotel from the rate base deprives the Stock Yards Company from such benefit as it would get from having a higher rate base and the net return allowed on a 7½ per cent basis would therefore be smaller and the stockyard would lose the benefit of that additional rate base. The patron's viewpoint is that if the hotel is included in the rate base, the patrons of the stockyard have to pay a fair return on the value of the hotel property. If it is not included in the rate base, they do not have to (T. 1983). I think the viewpoint of the stockyards is more important in that case. The difference between the viewpoint of the stockyard and the patron is simply that their property used and useful as they consider it includes the Transit House and any rate of return should be predicated on the inclusion of all used and useful property. The fair rates are based on the return on used and useful property, and just as soon as you reduce the amount of that used and useful property, you, of course, can lower the rates, if you want to. Now, that could be carried to extreme limits, if necessary. If the Transit House is put into the rate base, the patrons of the stockyard will have to pay a fair return on it, with the other property (T. 1984).

I have tried to explain the study which I made and the factors considered in connection with making up my estimates of the service lives of the various units of property. My estimate was based on an analysis of factors and not a guess. With reference to my statements on direct-examination and cross-examination relative to the weight which I gave to the factors of accident and obsolescence in determining my service lives, the facts as I see them are that consideration and weight may mean two different things. We [fol. 1589] have to consider all of these factors in determining service life, but to assign a certain percentage of weight to any one (T. 1985) of them is entirely another thing. We know from the record of this company that there has been accident due to fire. We therefore give that some consideration, although in a building such as the Exchange Building, I believe which was the subject of considerable cross-examination, the actual weight assigned to the fire probability would be practically negligible. In other words, I would fix my 50-year life, regardless of whether I thought there might be a fire there in the next 10 or 15 years or not.

You may give a certain factor consideration and it may have some effect on the conclusion. The factor of accident very slightly affected my conclusion as to the service life of units of this property (T. 1986). The only consideration that we would give to accident would be the fact that during its existence this company has had what might be termed "a normal number of fires." Therefore, I determined what might be termed "normal service lives", which would include the possibility of a normal number of fires. I gave it weight only as a normal consideration. As to the matter of flood accident, that is practically negligible. It is a fact that sometime in the future this river might overflow. It would be such a minor consideration that we could say that we could neglect it because other considerations would be so overwhelmingly predominant. As to whether a fire accident is in and flood accident is not in, I don't want you to consider that that is any influencing factor at all, except as it enters a normal determination of life. If there had been, we will say, four times as many fires, then, we would say it is in, and we are giving it weight, but, if there had been no fires, perhaps we could say that it is not, because we might extend the service life a little longer (T. [fol. 1590] 1987). A fire accident would be given the same consideration that I would give to the fact that we probably will expect normal weather conditions throughout the life of this structure and give a normal service life on the basis of normal weather, and the same would be true of tornado accident. I gave no consideration to the obsolescence that may come about by the exercise of a regulatory power in fixing the actual service life adopted. I simply say that is a factor that would influence the present reserve. I did not say that the Secretary, in weighing this matter of service life, should give no consideration to that factor. I said that, in my opinion, I fixed a service life based on the present conditions of used and useful property (T. 1988). If the Secretary does something else, then he can change his mind and fix service lives on the basis of what he does. If any of the property should be excluded from the rate base, that becomes a factor that should be considered in the service life of the property (T. 1989). In determining the service lives for the various units of the property of respondent, I gave some weight to the retirements of other industrial properties which have been retired in

the past which might be termed normal retirements (T. 1990) due to wear and tear of the property in ordinary operation. I had knowledge of a great many brick buildings or similar structures which had gone on with a normal existence, we will say, for many years longer than 50 years, that type of property being entirely different as to operation, but still constructed of the same material. I considered that as what might be termed a normal retirement and it assisted me in forming an opinion as to entirely different structures on this company's property. That was just one of the general subjects I gave consideration. I have in mind a great many railroad structures. I believe there was a depot building in St. Louis which has been there [fol. 1591] for an unusual number of years, operating as a depot. There are depot buildings in other cities, Harrisburg, Pennsylvania, has one. There have been many office buildings in cities that I have been familiar with that have extended their normal service lives and have not been retired on account of any unusual condition. I did not use the so-called life tables in making my determination of the service lives of respondent's property. The tables I think I explained at that time are either general tables such as the Bureau of Internal Revenue publish, or tables in various text books. The use of those is dangerous unless you know the conditions under which they were prepared and the purpose for which they are intended. I gave such tables consideration. It is a part of the knowledge you base your conclusion on. Page 338 of Government Exhibit No. 121-A shows repairs from 1922 to 1932, and, as I recall, there were certain other schedules (T. 1992) however, that contained the six year period that I had in mind. This particular one shows repairs divided in a certain manner that was not used, however, by me, as they stand. Pages 384 to 387 are entitled "Land, building and improvements, May 31, 1916, to December 31, 1922, statement No. 21," and the accounting apparently (T. 1993) indicates the additions and retirements of property during that period. Pages 25 to 51; inclusive, are entitled "Stockyards, buildings and improvements as at August 31, 1932," and that statement gives the balance in the investment and the additions and retirements from December 31, 1922, until August 31, 1932 (T. 1994).

I do not know of any reasonably safe place where money today can be invested and earn 7½ per cent. As a straight

out-and-out investment, such a rate of return would be very unusual. The use of the depreciation reserve fund by the respondent in its business, of course, is governed by the [fol. 1592] requirements of the business, but the use, if it is in the straight line reserve, may be one thing, and if it is the sinking-fund reserve, may be another. Assuming it is a straight line reserve, any use that respondent makes of any moneys which it has during the operation of the property and distinct from additions may be considered as a use under the head of working capital. That is, its (T. 1995) revenues come in at a time to supply the necessary requirements for expenses, or they do not. Now, if they do not, it is necessary to draw on the working capital at certain times to carry on the operation of the company, and if a portion of that working capital, which we may assume to be cash, is represented by a depreciation reserve on the other side of the balance sheet, that may be used in the operation of the company. It would not be bad management for the respondent to take some of the straight line depreciation reserve and use it to make additions to the property if it is the concensus of the management that that was the best place to put it. It just depends on what the management thinks of it, what they feel they should do with it. It is their property to do with as they choose (T. 1996). With reference to the difficulty which insurance companies are in now because they have invested their money in farm mortgages, if they foreclose for the purpose of collecting their money and investing it elsewhere, I do not know who they would collect it from. If I read the newspapers correctly, there is no sale for mortgaged property at the present time. Real estate is practically unsalable. When I spoke of the respondent becoming an investment company in connection with investing the sinking fund depreciation reserve, I meant that respondent is not now making investments as a requirement. There is a very definite requirement put upon the Stock Yards Company under the sink-[fol. 1593] ing fund method, that it shall invest these funds, so that they will bring in a specified rate of interest, and that means that they have to act and have to invest and have to watch the investment and attend to the other matters of the compounding of the interest and other features of the operation of the fund. Some individual may be so fortunate as to accumulate enough money so he feels he

should invest it, and he goes out and invests it, and, if that same individual, however, changes his occupation and becomes an investment banker, he has a different outlook entirely. It is the same way with this Stock Yards Company (T. 1997). If they are required to make an investment, they really become an investment trust, whereas, if they are just a stockyards company, they are simply looking after the interest of any surplus fund that they may have at a particular time. The respondent actually has money invested at the present time. The managers of respondent's business have to look after those investments. It is just the difference, though, that I have just pointed out, that that is simply an outgrowth of their business and is not their principal occupation. I do not know as it is their duty to go out and seek the very best possible investments at all. As good business men, they probably do endeavor to place their money where it will bring in a return, but they are not required to do it (T. 1998). That is not their main object in life. They are running a stockyards.

I have never had any experience in the operation of a sinking fund of any kind. With reference to whether a company, after the fixation of rates, uses its depreciation reserve accrued or accumulated before the fixation of rates, I simply said that as a result of my study I was convinced that the spreading of past accumulations into the future to influence the lowering of rates for the future was improper. I have quoted in this testimony a number of decisions that [fol. 1594] I have read and I have read a good many others (T. 1999). Of course, I must be influenced by what I read, regardless of whether it is in an accounting treatise or an economic treatise or a law decision. I have read the thought expressed by accountants, economists, and jurists that a rate-regulatory body may not allow a utility a deficient depreciation reserve and justify that on the ground that in the past the company has been setting up too great a depreciation reserve. If you tie it down to a rule, I presume as a matter of accounting there is nothing in accountancy to prevent a company from making a reexamination of the depreciation reserve and deciding that it has been setting up too much in the past which has been accumulating faster than there was any need for and that for a period in the future they will not set up as much as would be required. That would be correct all the way along until they equalize

that and then begin setting up the equal amount. Ordinary judgment would prevent such an approach of any accounting principles that I know of (T. 1999a). Assuming a company had been setting up $10,000 a year in straight line depreciation for ten years so that they had accumulated $100,000, and at some period after the ten years had an accountant examine their depreciation reserve, and he reached the conclusion that $5,000 per year over the past ten years would have been sufficient to set up, it would have resulted in $50,000, and there is really a surplus in the depreciation reserve of $50,000. If depreciation was actually accruing at the rate of $5,000 I would set up $5,000 a year from then on. I would not try to equalize by setting up less than $5,000 (T. 2000). I would not try to equalize because I would not consider that to be good accounting. I do not know that the surplus amount in the depreciation reserve was excessive for the time it was set [fol. 1595] up. It may be that five years from now I would go back to $10,000 a year. I would not adjust that at all. It is my opinion that an accountant can never say that a company has set up an excessive amount for depreciation reserve unless he was there at the time it was originally set up and knew it was excessive at that time. He cannot at this time say whether it was or not. An accountant coming into business some years after the depreciation reserve is first set up knows what the past experience shows and that is all (T. 2001).

Redirect examination:

As to the appreciation under Mr. Kosters' appraisal, the fact that his condition per cent was a compromise between him and the Government engineer is a factor that I would have no means of knowing without being advised. That might affect the result. Depreciating overheads in the former appraisal and not depreciating them in the present appraisal shows a different method that would account for some of the difference. I think it is a very fair interpretation of Mr. Kosters' testimony to say that with his present experience and training he would have reached a higher per cent condition in 1929 than he did (T. 2002).

Assuming respondent proves that its rates are not sufficient to afford it a fair return on the value of its property, the patrons are not being in any way burdened by having

the Transit House in the rate base. If I had used mortality tables for certain structures such as brick buildings I would have reduced the service lives below the life I fixed for them. That is illustrated particularly by the Bureau of Internal Revenue's service lives. I do not personally know whether the figures in Government Exhibit No. 121-A correctly reflect either the records of the company or the [fol. 1596] facts of the company's physical property. You could not use the sinking fund accretion for an addition to the property without restrictions, which would be that there must be an earning sufficient to meet the requirements of the sinking fund. It would be subject to good times or bad times, to the particular business for which the addition was made (T. 2003).

My investigation shows that respondent is earning less than 5 per cent on the money it puts out at interest. From that gross return taxes would have to be deducted. The present investment would not warrant the use of the sinking fund, in a similar manner of earning efficiency, so that 5 per cent per annum could be obtained to be compounded semi-annually.

I have had no experience in the operation of a sinking fund depreciation reserve for a property such as respondent's, or for any other property (T. 2004). I have never known of any such operation of a sinking fund being carried on.

Recross-examination:

As to whether the depreciation or lack of depreciation of general overheads has an effect on present conditions found for the physical property, it depends on what you are calling the physical property as a whole. In certain estimates with which I am familiar, the overheads are included in the total estimate and the resulting condition per cent is the ratio of the two figures in the total estimate. As to whether there would be any difference in the condition per cent found for the physical tangible property, if general overheads were depreciated or left undepreciated, it all hinges on what you call the physical property. I know in the Interstate Commerce Commission's determinations of cost of [fol. 1597] reproduction new and cost of reproduction less depreciation, a portion of the general overheads are depreciated, and one item, engineering, is not depreciated, but

the general term of the condition per cent property as a whole includes all of those overheads as well as what you term physical property (T. 2005). The practice of the Interstate Commerce Commission, and that is the most general practice with which I am familiar, differs because one of the overheads there is not depreciated. The failure to depreciate that overhead changes the figure that is found for the physical property for the report as a whole, because the same figures are in both cost of reproduction new and cost of reproduction new less depreciation for that single overhead. Assuming a building where the condition per cent is 80, and you depreciate the overheads to 80 per cent, the condition per cent of your physical property is still 80. If you do not depreciate the general overheads at all, the condition per cent of the physical property is still 80 per cent (T. 2006), if you are speaking of your first proposition, general property, but if you are adding some money in there that is not depreciated, you are changing the ratio.

Land Values

Mr. William E. Spratt, a witness, called by respondent, having first been duly sworn, testified in substance as follows:

Direct examination:

I live in St. Joseph and am a realtor and am the same person who testified in the previous proceeding (T. 2007). Since that hearing, I have continued in the general real estate business as conducted at the time of the prior hearing. I assisted, through the Real Estate Appraisal Board in appraising the land of the St. Joseph Water Company, [fol. 1598] the St. Joseph Light, Heat and Power Company, and individually I appraised the land of the St. Joseph Gas Company. I reappraised the land of the St. Joseph Stock Yards Company for its hearing at Minneapolis, and a number of other private appraisals through our office. In 1930 I testified in the proceedings involving the recapture of excess earnings of the St. Joseph Belt Railway Company. In 1932 I was President of the St. Joseph Real Estate Board and am today a director.

In 1929 I appraised all the land owned by respondent and testified in the former hearing (T. 2008), as to my opinion of values. I have been asked to bring that appraisal down to date. I have done so. I took enough time in my reappraisal to sufficiently apprise myself of the conditions and to associate in my mind the conditions as they are. I was at it off and on for several weeks. I followed the same general methods used by me in my 1929 appraisal. Respondent's Exhibit No. 132 is my appraisal report (T. 2009). It was prepared by me personally. Page 21 of that exhibit represents my opinion of the values of respondent's lands, the zones being the same zones I used in the prior hearing with the exception of some variation of area. Mr. Black gave me the area of each zone and I understand that it was the result of an agreement with Mr. Henrici as to the area. On page 22 appears a map on which I have outlined each of the zones listed on page 21, stating the area in acres and square feet as well as the unit prices (T. 2010). The red lines on page 22 indicate the zones that the Stock Yards Company believes are used and useful. The yellow lines are outside of that scope of use. Mr. Black, representing the Stock Yards Company, gave me that designation. Respondent's Exhibit No. 132, plus my previous testimony in these proceedings, set forth the [fols. 1599–1601] method used by me in arriving at the value of respondent's lands.

RESPONDENT'S EXHIBIT No. 132

Below are pages 21 and 22 of Respondent's Exhibit No. 132, being the summary of valuation and the land map covered by the appraisal of William E. Spratt.

Summary of Valuation of Land Owned by St. Joseph Stock Yards Company, by Zones, as of August 1, 1932

Zone	Acres	Square Feet	Sq. Ft. Rate	Acre Rate	Zone Value
A	72.249	3,147,163	.26	$11,325.58	$818,262.38
B	17.293	753,286	.13	5,662.80	97,927.18
C	24.655	1,073,972	.11	4,791.60	118,136.92
G	11.436	498,152	.15	6,534.00	74,722.80
E	10.283	447,927	.11	4,791.60	49,271.97
F	45.951	2,001,626	.05	2,178.00	100,081.30
F-1	.874	38,071	.02	871.20	761.42
G	22.752	991,077	.01492	650.00	14,788.80
H	10.313	449,234	.01721	750.00	7,734.75
I	9.400	409,464	.01722	750.00	7,050.00
J	24.873	1,083,468	.01722	750.00	18,654.75
K	16.083	700,577	.011478	500.00	8,041.50
L	18.316	797,843	.006887	300.00	5,494.80
M	12.516	545.197	.0046	200.00	2,503.20
N	56.412	2,457,322	.0688	3,000.00	169,236.00
1	.544	23,697	.35	15,246.20	8,293.95
2	3.190	138,956	.12	5,227.20	16,674.72
3	14.362	625,609	.06	2,613.60	37,536.54
Total	371.502	16,182,641			$1,555,172.98

[fol. 1602] On page 13 of Respondent's Exhibit No. 132, I refer to certain transfers, which are the same as those incorporated in Mr. Zelinski's report which is Government Exhibit No. 128. He listed 147 transfers and I think we had two or three outside of those, but those were the ones that we investigated together (T. 2011). I myself would have placed these transfers in the record but for the fact that they were put in by Mr. Zelinski. I had before me and considered each of the 147 transfers listed by Mr. Zelinski in his report, which is Government Exhibit No. 128. Mr. Zelinski, Mr. Quinn and I went together to ascertain the facts in the investigation of practically all of these transfers (T. 2012). I went with Mr. Beauchamp, a representative of the Interstate Commerce Commission, and investigated each of the first 53 transfers. Some of them Mr. Zelinski further investigated.

In the appraisal of real estate, I find various types of land, such as residential, retail, wholesale, industrial and farm land. I would classify respondent's land as industrial property. It takes on a measure of both retail and wholesale property on account of the amount of trading in commerce that goes on down there in the sale of cattle, hogs and sheep and all kinds of livestock (T. 2013). Land values always follow where people congregate, particularly in a business way. The most valuable property in town would usually be the particular corners where most people go in.

certain parts of the day. Trade is a peculiar thing. It is not always in the crowd. It is the crowd that has the trading tendency or the trading mood, and they have certain moods, that gather on certain hours and certain days, and those places are the center portion. The fact that people have tendencies to go to certain places to do their trading has an effect upon land values in that immediate section. I found in Zone A that a great many people sell a great [fol. 1603] many dollars worth of livestock each day, and that they are there either in person or by representative, and it makes a concentration (T. 2014). I found there both buyers and sellers. I would think there would be as many people gather in Zone A to transact business as anywhere in South St. Joseph and the adjoining unit during the course of a week. Without doubt, the center of values would be Packers Avenue and Illinois Avenue. I think that location is more valuable than the property east of the railroad tracks. If the same development were permitted around Packers and Illinois Avenues, its land value would far exceed the land on Illinois Avenue east of the railroad tracks. In making my appraisal, I have had that in mind (T. 2015), as well as the various other features outlined in detail at the time of the 1929 hearing and as supplemented by my appraisal report which is Respondent's Exhibit No. 132.

My valuation is as of August 1, 1932. It represents the value of land of respondent through the year 1932. It is the value at the present time. I knew that respondent had another land appraiser. Mr. Quinn and I did not cooperate in making our respective appraisals only in so far as we were ascertaining the facts pertaining to the transfers and that was also in the company with Mr. Zelinski. I was not in any manner influenced by Mr. Quinn's opinions as to the value of the land I appraised (T. 2016). I did not discuss the value of this land with Mr. Quinn.

I have read the findings, conclusion and order entered by the Secretary of Agriculture in this proceeding on July 20, 1931. I am familiar with paragraph 73 thereof. I was one of the appraisers referred to in that paragraph, the others being Frank M. Atkinson and Walter L. Mack, neither of whom is now alive (T. 2017). Referring to the following sentence in said paragraph: "It is very clear [fol. 1604] from the report of the record that all of these

appraisers included in their valuation the going concern element inhering in the land because of its integration in, and use as a part of a going operating concern, namely, the stockyards," that is not a true statement as far as I am concerned. In my 1929 appraisals I did not include anything but the bare land value. I did not include in my land value going concern value. In my appraisal as of August 1, 1932, I did not include the going concern value in my land value. Referring to the following sentence in said paragraph 73: "It is equally clear that in the mind of each of the appraisers, this going concern element was valued at 15 cents per square foot," that is not a correct statement as far as I am concerned (T. 2018).

Land Values Over Period 1927 to 1932

I have been asked to value the land now owned by respondent by applying average values prevailing over the period 1927 to 1932, inclusive. I was familiar with the value of respondent's property during that period. I have appraised the stockyards property before on previous dates, appraised the Belt Railway Company property, and appraised the Union Terminal Railway property in that vicinity at different times. I made one specific appraisal in 1929. I was asked to make an affidavit which was filed in the injunction proceedings following the issuing of the order of the Secretary dated July 20, 1931, and testified in the recapture case of the St. Joseph Belt Railway Company as to the value of that property for the years 1920 to 1928, inclusive (T. 2019). As a result of these various appraisals, and as a result of additional investigation that I have made just prior to my present appraisal, I feel that I knew the value of respondent's property throughout the period 1927 to 1932, inclusive. I have prepared a state-[fol. 1605] ment showing my opinion of that value which is Respondent's Exhibit No. 133. In preparing that exhibit, I used the same methods used in my 1929 and 1932 appraisals. The zones in the areas are the same as shown on page 21 of Respondent's Exhibit No. 132 (T. 2020). As shown on the exhibit, the unit prices for the years 1927, 1928, 1929 and 1930 are the same as in my 1929 appraisal. The figures for the year 1932 are the same as in my 1932 appraisal. Up until 1930, the prices of land had

been on more of an even keel. The reduction in the value of land did not begin until later, after the 1929 catastrophe in the east, so far as stock markets were concerned, and I made my first reduction in the valuation as we felt it here in this section, in 1931. As far as my opinion of value is concerned, that reduction continued and increased for the year 1932. The figures in the last column under the heading "1927-1932, Inclusive," are the results of a pure mathematical average of the six preceding columns, covered respectively by the years 1927 to 1932, inclusive (T. 2022). It is my opinion that as we move out of the depression, one of the first things that will come back will be the values of land used for a useful purpose which would include the property of respondent that is being used. That would be the first character of land to meet the greater inflation. If times get better and receipts at the yards increase, the value of land in Zones A, B, C and E, and 1, 2 and 3 would work back to the value I placed on them in 1929 (T. 2023).

[fol. 1606] RESPONDENT'S EXHIBIT No. 133

Below is set forth the first three and last two columns of Respondent's Exhibit No. 133.

Value of Land Based upon Average Values, During Period 1927 to 1932.

Wm. E. Spratt, Appraiser

Zone	Acres	Sq. Ft.	Price		Total
A	72.249	3,147,163	$.29	Sq. Ft.	$912,677.27
B	17.293	753,286	.14½	Sq. Ft.	109,221.49
C	24.655	1,073,972	.14	Sq. Ft.	150,356.08
D	11.436	498,152	.18¾	Sq. Ft.	93,403.50
E	10.283	447,927	.14	Sq. Ft.	62,709.78
F	45.951	2,001,626	.05¾	Sq. Ft.	115,093.50
F-1	.874	38,071	.05¾	Sq. Ft.	1,903.55
G	22.752	991,077	912.50	A.	20,761.20
H	10.313	449,234	937.50	A.	9,668.44
I	9.4	409,464	937.50	A.	8,812.50
J	24.873	1,083,468	937.50	A.	23,318.44
K	16.083	700,577	650.00	A.	10,453.95
L	18.316	797,843	450.00	A.	8,242.20
M	12.516	545,197	312.50	A.	3,911.25
N	56.412	2,457,322	3375.00	A.	190,390.50
1	.544	23,697	.38¾	Sq. Ft.	9,182.59
2	3.19	138,956	.14¼	Sq. Ft.	19,801.23
3	14.362	625,609	.07½	Sq. Ft.	46,920.68
	371.502	16,182,641			$1,796,838.45

Cross-examination:

Since the time I testified in the prior proceeding, I have appraised for rate making purposes, in conjunction with

the Real Estate Appraisal Board at St. Joseph, the land of the St. Joseph Water Company and the land of the St. Joseph Light, Heat and Power Company. I have not appraised any stockyard property for any purpose other than the property of respondent. Page 1 of Respondent's Exhibit No. 132 is a rather extensive picture of respondent's land and surrounding areas. It is a reproduction of a photo- [fol. 1607] graph. There has been some retouching. The picture was taken quite a while ago (T. 2024). The St. Joseph Tannery, indicated in the picture as having smoke coming from the smoke stacks, is not now operating, but the building is still there. It ceased operations some time after the War closed. I do not know the date the photograph from which the reproduction was made was taken. It is today, though, a pretty good reproduction of the conditions that are pictured. It is a very fair representation of the area as it stands today. I think the main difference is that the tannery has ceased operating. There has been an addition made to the terminal warehouse which is much larger now than it was then (T. 2025). I do not remember the date of the addition to the terminal warehouse. I could not state whether it was before or after 1929. Page 2 is a map entitled "St. Joseph, Mid-Continental Point of Distribution," which was prepared by the St. Joseph Chamber of Commerce to indicate the railroad service which St. Joseph enjoys. All the railroads that cross at St. Joseph do not represent main lines with respect to railroads, but they connect with main lines (T. 2026).

In my report at page 3 I say: "The second page is a drawing which encompasses the entire United States. The city of St. Joseph actually is situated within about a hundred miles of the geographical center of the nation. There are six transcontinental trunk lines of railroads which converge here, and which reach out through their network of connections with other lines to the extremities of the country." One of the principal reasons why the stockyard and the packing houses were originally located at St. Joseph was on account of the railroad services which the vicinity afforded. Very extensive railroad service gives an extraordinary stability to the stockyard business in St. Joseph. [fol. 1608] The picture on page 4 of the St. Joseph wholesale district is an actual photograph (T. 2027). The light colored building in the right foreground is the Robidoux

Hotel. Some of the buildings in the immediate foreground of the picture are in the wholesale district. The principal wholesale district lies on the north and west of the Robidoux Hotel. The wholesale business had its beginnings in St. Joseph when the Hannibal and St. Joseph Railroad was completed into this section in 1858. The City of St. Joseph became a fur-trading station in 1826 and was laid out as a town in 1843 (T. 2027-a). The existence of the wholesale district and the building shown in the picture has a reflex action on the value of respondent's land. It takes a good city to invite good citizens and good citizens can make good employees. All this has a bearing on all of the land in the vicinity (T. 2027-b).

In a general way the commodities that are wholesaled out of the St. Joseph wholesale district include dry goods, groceries, millinery, hats and caps, boots and shoes, in general. There are a great many different wholesale stocks in St. Joseph. These are the principal ones. The building which appears to be immediately west of the Robidoux Hotel in the picture which is the Wheeler and Motter Building is apparently not occupied. The company which formerly occupied it went of business. Some of the companies have done likewise, I do not know how many (T. 2028).

The John S. Brittain Dry Goods Company and the Noyes and Norman Shoe Company have gone out of business. The decadence of the wholesale jobbing and distributing business of St. Joseph is not anymore outstanding in St. Joseph than it is anywhere else. The evolution of time has brought about an evolution in business. There has been a more direct distribution from manufacturer to con-
[fol. 1609] sumer. There was a time when St. Joseph sat at the western terminus of the most western railroad in America. They shipped all of the manufactured goods from the east as far as they could and here they were dumped off at the railroad and stored in large buildings and a large wholesale business developed here. As the railroads began to build west, as they began to fork and go into other directions, the field, the wholesale field of St. Joseph was more or less curtailed. Inroads were made further west. They shipped the goods further west and distribution began further west, but that happened to all sections of like character. There has been a general de-

cadence in the wholesale and jobbing business throughout the country. I do not know whether the grocery chain stores have done it or whether the decadence may have been the reason for the chain stores.

My statement that it has affected other places as well as St. Joseph means that the decadence of the wholesale business has affected other places in which wholesale businesses were carried on and cities which did not depend upon wholesale and jobbing business were not affected by its decadence. We had another very large business here at one time and through the decadence that took it away, in the evolution of time, we got rid of the livery stables and of the great westward pack mule teams, and so forth. We got rid of them and we succeeded it. The evolution of time carries evolution of business. I mean, though, that the livery stables and the great cross country pack mules and the great wagon teams that went through here made St. Joseph at one time a remarkable town on this western terminus for wholesale houses. We finally got rid of all those wagons, livery stables, and express trains, but the town picked up and supplied other industries. In other words, other things came to take the place of the wagon trains and the livery stables. It is true that in many cities [fol. 1610] where the wholesale business has practically died out and other industries have come in, the cities have built up to a much greater activity than they ever knew in the days when wholesaling was a big factor of business. As to whether something like that happened in Kansas City, Kansas City is a great big fine city and I do not know so much about it (T. 2031). St. Joseph is not feeling any ill effects from the loss of the wholesale business any more than the general depression. That is, it is sharing the nationwide depression. The records will show that we are increasing in new industries which are coming to the city, in population, business and so forth. As to the growth of St. Joseph between the 1920 and the 1930 census, the census does not indicate a very large growth within the city limits. Our city limits have not been extended, though, for some twenty odd years, and there is quite an extensive residential district just outside of the city that might very well be counted as St. Joseph. In 1900, as I remember, we had what we termed a padded payroll here. We did not consider the 1900 census to be very reliable, although

we had a man from Washington come on through here and investigated it and he reported it O. K. (T. 2032). Kansas City is a town of 500,000 people and we are a town of 80,000 people. I think it is correct that there has not been in St. Joseph any industrial expansion in the last decade comparable to that which has taken place in Kansas City. We have some industries that are located in St. Joseph that came here preferable to going to Kansas City, but I think the larger percentage of industry did prefer to go to Kansas City (T. 2033). It is approximately three miles from the wholesale district of St. Joseph in a general southerly direction to the respondent's property. In passing through this wholesale district to go toward respondent's land, you first pass through a part of the retail district of [fol. 1611] St. Joseph, then through railroad yards and past small stores and small industries all the way down to the viaduct and then crossing the viaduct South St. Joseph begins. The viaduct passes over the railroad tracks and just north of it is industrial property. After you pass the viaduct between the main street and the Missouri River, there is some rough territory immediately on the south of Sixth Street, then there is a broader expanse of level ground over the railroad yards out to the river. That broad expanse continues on down until you come to respondent's land but there are industries scattered all through there (T. 2034). Zone N of respondent's land constitutes part of that broad expanse.

I state on page 4 of Respondent's Exhibit No. 132 that millions of dollars have been spent in making St. Joseph a great center from which radiate in every direction the finest "all-weather" roads for vehicular traffic by which I mean hard surfaced roads. They are suitable for hauling livestock by truck into St. Joseph. I know of no kind of a storm which would stop livestock from being moved over those roads (T. 2035). These hard surfaced or paved roads have changed the method by which the stockyards receive stock very materially. Where formerly it came in on the train, now many of the nearest shipments come in by truck. These roads radiate in practically all parts of the territory from which respondent draws its livestock. These roads guarantee that St. Joseph will be in a position to get its fair share of livestock by truck, and I would like further to explain that by stating that St. Joseph is in the imme-

diate territory of the line of production of stock. A great many of the fat cattle and sheep and hogs are really conditioned within 100 miles of St. Joseph, they reach St. Joseph through the market by truck, and are mostly [fol. 1612] shipped out of here in the finished product by the train. I don't know as it lessens the necessity of the train for the long haul. As to the statement in Respondent's Exhibit No. 132, that respondent stockyard is the fifth largest in the world, I hope I did not take in too much territory. It is one of the largest, but the fifth in the country, maybe I should not say that, but it has been commonly termed that around here. Maybe I fell into the phrase of fifth, but it may be the fourth, I don't know. I measured that by the volume of livestock received annually. It is large enough so that the Secretary of Agriculture began on this one anyhow.

On page 26 of Respondent's Exhibit No. 132 is a picture intended to represent the Anchor Serum Company. That is on Zone B of respondent's property. It is my opinion that that picture is a drawing. It is a very fair representation (T. 2037). I do not know whether all of the buildings exist or not. The Anchor Serum Company was a revelation to me when I went down there and investigated it, and I live here in St. Joseph. There is a paved, all-weather road that leads down paralleling the railroad, but there is not any kind of an improved road to the south of Zone B. I did not say that this was a true and accurate picture of the buildings that exist. I said it was a fair representation of the nature of the improvements there. I do not know how many of the buildings shown on this picture are actually in existence (T. 2038).

On page 32 of Respondent's Exhibit No. 132 the picture entitled "Inso-Board Plant," is a drawing. I do not know whether the buildings and structures indicated all exist or not. There are some very substantial improvements there, and this indicates a substantial improvement.

With reference to the changes in zone areas agreed upon by Mr. Kosters and Mr. Henrici, I do not know [fol. 1613] whether the changes involved any changes in boundaries. There is a difference in the sum total of acreage. I do not know just exactly what that difference is, where it developed. As far as I know, the boundaries of the zones are the same as shown on the map which is

page 22 of Respondent's Exhibit No. 132. The zones were submitted to me (T. 2039) by Mr. Black with the areas marked on them. I understood it was Mr. Black and the Government who agreed. I think there was some variation in the areas of Zones A and B which were first submitted to me from the areas stated in my report on page 21.

I have glanced through the printed narration of my testimony in the previous hearing appearing on pages 153 to 194 of the abstract. I would say that that is substantially an accurate statement of what I testified to at that hearing. As to the general principles governing the appraisal of lands for rate making purposes, I tried to follow the Minnesota Rate Case instructions. I at least tried to follow the same principles that I did before (T. 2040). There has not been any change in my views as to the factors which govern or affect land values. There has been no change in my views as to the factors which govern and affect the values of lands of respondent except as I have noted in my report, the general depression. I set out in my appraisal of this year that all of the evidence that I put in at the previous hearing was in evidence again, followed the same principles. I would consider that Illinois Avenue and Packers Avenue would be the peak value of all that zone. To illustrate when I said that the highest value, the peak value of the property I considered as those two avenues, I did not mean in the center, I mean in the corners of the land that adjoins that section (T. 2041). I think the peak value is at the four corners of the intersection of Packers and Illinois Avenues. That is [fol. 1614] susceptible of higher uses than any other land in there. The value would not decrease as fast going east along Illinois Avenue as it probably would going west. The value holds pretty well as you go east, and I think holds pretty well as you go north along Packers Avenue on either side. The values do not hold so well going south along Packers Avenue (T. 2042). I do not know how wide a strip would take the higher values. I would want to know for what purposes the land was going to be used. My opinion does not cover any definite range of land at that place, but I was speaking just in a general way. The reason that the land at the intersection of Illinois and Packers Avenues is the highest valued land is that there are more people, more trade, more trucks and more ac-

tivity at that corner than at any other place in the zone. I stated that that land is susceptible of being used for greater purposes than the land along Illinois Avenue east of the railroad tracks (T. 2043).

I think it is available for use for a higher purpose than it is now used. As to what that would be I do not know. There are many things it could be used for that would intensify its use and intensify its value. I dare say any of those manufacturing feed institutions down there would be glad to be in that center where all the trucks come in. As to whether it would be a higher use and a higher value to have a feed mill which manufactures livestock feeds located at the corner of Illinois Avenue east of Packers Avenue, I am only judging by the fact that they try to get as close to the center as they can. The trucks all come along there in order to unload or receive their load of livestock (T. 2044). If this area was occupied by feed mills, the livestock would have to move over to a place that would be adjacent. The land could not be used for both purposes. My thought is that if there were a line of feed mills along each side of Illinois Avenue between Packers [fol. 1615] Avenue and the railroad track, the land would be more valuable than it is now, and that would be because trucks coming to the stockyards with livestock would stop at the mills to buy feed. I would not expect the feed mills to push the stockyards out of business. I still expect the stockyards to operate and control that portion of it. As to whether I would expect feed mills on Illinois Avenue within Zone A, as long as the stockyards exist, I do not know about that. They have never been able to get in there and I was just supposing that the stockyard management felt like they could not do it (T. 2045). Other than feed mills I do not recall anything right now that would make the land along Illinois Avenue in Zone A more valuable. The traffic is usually brought there by the fact that the stockyards unloading dock is there. The putting of the land to other uses would mean pushing the stockyards back from that land and if they would push it back too far, you would push the value out of it. If the stockyard were pushed back, whether the trucks would still come into Illinois Avenue would be entirely dependent upon the routing of the trucks, but I think that would be a practical way to route them (T. 2046).

In my statement relative to the corner of Sixth and Felix

Streets, I was not referring to the values out in the street itself as the street could not be sold. As I understand it, Packers Avenue and Illinois Avenue today are privately owned thoroughfares, thrown open to the use of the public, subject to the control of the stockyard. If the stockyards were to sell lots along those avenues, I don't know under what restrictions they would sell a lot. I don't understand that it is even within the range of a possibility of their ever selling a lot in through there. As to the probability of Zone A being used for wholesale and retail purposes, I don't [fol. 1616] know. If you had asked me ten or fifteen years ago whether or not there would be an unloading dock and a loading dock there for a tremendous amount of trucks, I might have thought that was impossible. I don't know what the future holds (T. 2047). I dare say there are a number of institutions that would be happy to adjust themselves in there if the company should change its policy. It is undoubtedly the existence of the stockyards business in that zone which brings the crowd. Whatever way business went, the crowds would recede with it (T. 2048). The Exchange Building used to be over on Missouri Avenue. At that time the peak of values was on Missouri Avenue. When the Exchange Building was moved to Illinois Avenue, that became the center of the crowds and the peak of values. From my knowledge in valuing real estate, the value does not always go with the crowds. It goes with the trading crowds and that is why values come in such streets as Felix, Edmond and Francis (T. 2049). There are more people on Edmond Street in 24 hours than on Felix Street, yet the value of Edmond Street is probably third and is first on Felix Street because it has the trading crowd. A store would locate on Felix Street because the trading crowd is there (T. 2050). At the stockyards, it is the stockyards that brings the crowd. I didn't say that the land along Illinois Avenue west of the railroad tracks could be sold for higher values than the land east of the railroad tracks along Illinois Avenue. I doubt whether it could be sold at any price and the stockyards still operate there (T. 2051).

My value of the land is of the naked land without improvements on it, knowing that the stockyards are on there, but I don't value the super-structures. I value the vacant, naked land. I am conscious of the fact that the

stockyards are there. I know the occupancy of the land, I [fol. 1617] know the history of the land, I know that, within less than 100 years ago, it belonged to the Indians, I know that it was a swamp land, I know that it was not used for anything. I have hunted over in it many, many times when it was a swamp and useless land. In 1896, Mr. Swift, and those interested with him, came here and purchased that land and reclaimed it and built their stockyard, railroad and packing houses, and it has, for thirty-five years, never been used for anything else (T. 2052).

As a developed piece of land, I know it is more valuable than any undeveloped piece of ground. I know it is impossible to move the stockyards from it and at the same time take the railroad facilities away, take the packing house facilities away, which constitute an industry that is there, working together, and you cannot remove it without injury to all the land that is there, and I decline to consider a value of that character. I have considered the land vacant and unimproved; I have not considered the value of the super-structures at all. I do not include in my valuation anything that Mr. Kosters has included in his valuation (T. 2053). The use of any land depends upon and governs its value. That is true of all land. Use of land makes value, and availability to use makes value. Availability to use, and on top of that actual use, makes value. It depends, of course, on how long a piece of land can have its occupancy. A peanut stand by the side of the road might have an unlimited use while a circus is here, but that is gone tomorrow. The St. Joseph Stock Yards is an institution that has been located there for 35 years, and we hope and believe it is a very permanent institution (T. 2054). The use of Zone A, having a practical purpose to serve, makes a value to the land. I did not say that the actual use of Zone A as the site of the St. Joseph Stock Yards Company does not add anything to [fol. 1618] its value. I said that Zone A, being in use, serving a practical purpose, available as it is, puts a value into it in excess of any raw land unused and in waiting (T. 2055).

With reference to my statement on direct examination that I did not include any going concern value in my land value in my previous appraisal, I did not mean to change the testimony I gave at the former hearing, but it is my

thought that the Secretary did not put the right interpretation on my testimony. In my 1929 appraisal, I place a square foot value of 30 cents on Zone A and 15 cents on Zone B. In Respondent's Exhibit No. 132, page 21, where a value of 26 cents a square foot is placed on Zone A and 13 cents a square foot on Zone B, it develops that the relationship of the figures is the same. That is to say, in each instance the value placed on Zone B is one-half that placed on Zone A, (T. 2056) although I did not intend it to be that way. I used the same method of determining value in 1929 and in 1932. The value of 30 cents per square foot on Zone A and 15 cents on Zone B, shown in Respondent's Exhibit No. 133, for the period 1927 to 1930, represents the value for each year that I found. That is, it is worth 30 and 15 cents, respectively, in each of the years. In my opinion there was not any change in value between 1927 and 1930. In 1931 there came a change in value due to the general economic conditions, and a further change in 1932 due to the same conditions (T. 2057). The development of those conditions from 1931 to 1932 carried the land values down a little.

When I appraised the Belt Railway Company's land, I necessarily had to take into consideration the value of the stockyards land which was adjacent and similar land. The Belt Railway land is one of the three intertwined and interlacing associations down there, each necessary to [fol. 1619] the other, the stockyard, railroad and packing houses. The Belt Railway land would necessarily have to take on its shape around the combined stockyard and packing house land in order to give the service. It is the same type and kind of land. Where it actually adjoins Zone A is the same type and kind of land as Zone A (T. 2058).

I considered the Belt Railway as a whole proposition. I testified that the land was worth so much a square foot as an assembled tract, all of the property. This tract in the service that it gives in the use to which it is applied goes around various properties of various values. The Belt Railway Company passes close by some land that I do not value nearly as high as I would the stockyards property or the packing house property. It goes by some acreage property of much lesser value than the stockyards or packing houses, and I would not like to say that it takes

on the value of the cheaper land that it happens to pass by. The Belt Railroad right-of-way adjoins one side of Zone E and also a part of it runs through Zone D (T. 2059). I appraised the Belt Railroad lands in 1920 to 1928, inclusive, in connection with the hearing before the Interstate Commerce Commission at Washington, D. C., which proceeding is known as Finance Docket No. 3906. The proceeding was under the Recapture Act or Section 15-A of the Interstate Commerce Act. From 1920 to 1928 that land, in my opinion, maintained approximately the same square foot value (T. 2060). As far back as 1913 I found the value of the Belt Railroad right-of-way the same as I found in my 1929 valuation. I did not have anything to do with the estimation or determination of the rent to be paid by the Belt Railroad Company in the lease executed January 1, 1929, with an expiration date of December 31, 1938 (T. 2061).

In my 1932 valuation of the zones within the ring of the [fol. 1620] Belt, I gave weight to that lease. There is no difference in the weight which I gave to it in my 1932 valuation and the weight I gave it in my 1929 valuation. It appears, in Respondent's Exhibit No. 132 that since my 1929 appraisal respondent has sold the right-of-way covered by the lease, and the price stated in the sale is substantially the same amount as would be arrived at by capitalizing the rental in the lease at 6 per cent (T. 2062). That sale was one of the considerations that I had and I gave it weight in arriving at my values. I know that at the time of that sale the stock of the Belt Railway Company was owned by the St. Joseph Stock Yards and that the managing officers of both companies were the same, but I considered that there was a sale on the ground that there were some disinterested parties who parted with $1,500,000.00 in cash. I mean that somebody who purchased the Belt Railway Company paid to the stockyards and to the Belt Railroad $1,500,000.00 in cash. That was for the entire railway (T. 2063). I am referring to the sale where the entire Belt Railroad was sold to some outside company, and I am also referring to the sale by the Stock Yards Company of the land occupied by the Belt Railway. I am referring to the sale discussed on page 13 of Respondent's Exhibit No. 132. This is the general sale of the entire

property of the Belt Railway Company. I do not know who the purchaser was. I am reasonably certain that it was to some company over which the Stock Yards Company has no control, although there is nothing of record to show that it was not (T. 2064). I am considering the sale of the Belt Railway Company for $1,500,000.00 as an arm-length's sale. I think that an investigation was made by a corps of engineers and estimators and evaluators who were here and went over this plant (T. 2065). The investigation just [fol. 1621] referred to is discussed on page 18 of Respondent's Exhibit No. 132. In the statement in the last paragraph on page 13 of Respondent's Exhibit No. 132 that the principal worth of the Belt Railway property is the total value of the land, equipment, and so forth, by the term "equipment" I refer to engines, cars and so forth, and all the structural property and possessions. There was also some cash used as working capital. The sale of the Belt Railroad was effected by a sale of its capital stock (T. 2066). The assignment of the capital stock carried with it all of the equipment and land. Prior to making the assignment of the stock the Belt Railroad purchased from the Stock Yards Company the land it previously occupied by lease. Referring to page 3 of a pamphlet entitled "Before the Interstate Commerce Commission, Excess Income of the St. Joseph Belt Railway Company, Financial Docket No. 3906, Abstract of Evidence and Brief on Behalf of the St. Joseph Belt Railway," that is the proceeding in which I testified that I had valued the Belt Railway Company's land for the period 1920 to 1928 (T. 2067). My idea of the value of the Belt Railroad Company's land at that time was 30 cents per square foot.

"Mr. Bohannan: Now, Mr. Spratt, I refer you back to page 13 of Respondent's proposed Exhibit 132 and to page 21 of that same exhibit and I ask you to tell us how, by what process, outlining the steps of the process as you go along, you establish any relationship whatsoever between the price of $1,500,000.00 paid by somebody for the (T. 2078) capital stock of the Belt Line Railway Company and the values of 26 cents for Zone A, 13 cents for Zone B, 15 cents for Zone D, and 11 cents for Zone E, which you placed on those respective zones?

"A. Well, my value of Zone A at 26 cents per square foot is my idea of its worth and when I make reference to the sale of the Belt Railway Company which is described [fol. 1622] under sales sheet 54 from the Stockyards Company to the Belt Railway Company, I consider that sale in which there is something like $1,000,000 in money that was transferred from disinterested and outside parties to the stockyards for what must have been land value, I consider that corroborative of my idea of the value of Zone A. My value of Zone B is of lesser value than Zone A. There comes a peak price, and as you recede from the center or the peak price, you recede in value very fast sometimes. It develops that my Zone B is one-half of what Zone A is. I did not intentionally or knowingly make it one-half. My computation made it one-half. Zone C, do you also——?

"Q. No, D. Just one minute, let me be accurate. D and E were the other two.

"A. D. D is a tract of land containing 11.436 acres which lies immediately north of Swift and Company's plant and immediately south of the St. Joseph Warehouse Plant. It is bisected by the Belt line. It is a tract of ground that for 25 or 30 years has been lying there unused, ready to be called upon. I have not given to it the value that I would give to the Stockyards Company or to Swift and (T. 2079) Company or to the St. Joseph Warehouse Company land, because it is not in any practical use. With all the elements of value, use probably has the greatest bearing. The more and diversified uses to which a piece of property might be applied tends to its increased value. I gave a lesser value to D than I did to A because the land is not serving or been developed as A has, and I don't mean developed in superstructures, I mean developed in the land itself as regards to A and as regards to B.

"The Examiner: Five minute recess.

"(Whereupon a fifteen minute recess was taken).

[fol. 1623] "Mr. Bohannan (continuing): Mr. Spratt, I have had my last question and the answer transcribed by the reporter and this is what I asked you: 'Now, Mr. Spratt, I refer you back to page 13 of Respondent's proposed Exhibit 132 and to page 21 of that same exhibit and I ask you to tell us how, by what process, outlining

the steps of the process as you go along, you establish any relationship whatsoever between the price of $1,500,000 paid by somebody for the capital stock of the Belt Line Railway Company and the values of 26 cents for Zone A, 13 cents for Zone B, 15 cents for Zone D, and 11 cents for Zone E, which you placed on those respective zones?

"'A. Well, my value of Zone A at 26 cents per square foot is my idea of its worth, and when I make reference to the sale of the Belt Railway Company which is described under sales sheet 54 from the Stockyards Company to the Belt Railway Company, I consider that (T. 2080) sale in which there is something like $1,000,000 in money that was transferred from disinterested and outside parties to the stockyards for what must have been land value, I consider that corroborative of my idea of the value of Zone A. My value of Zone B is of lesser value than Zone A. There comes a peak price, and as you recede from the center or the peak price, you recede in value very fast sometimes. It develops that my Zone B is one-half of what Zone A is. I did not intentionally or knowingly make it one-half. My computation made it one-half. Zone C, do you also——?

"'Q. No, D. Just one minute, let me be accurate. D and E were the other two?

"'A. D. D is a tract of land containing 11.436 acres which lies immediately north of Swift and Company's plant and immediately south of the St. Joseph Warehouse plant. It is bisected by the Belt line. It is a tract of [fol. 1624] ground that for 25 or 30 years has been lying there unused, ready to be called upon. I have not given to it the value that I would give to the Stockyards Company or to Swift and Company or to the St. Joseph Warehouse Company land because it is not in any practical use. With all the elements of value, use probably has the greatest bearing. The more and diversified uses to which a piece of property might be applied tends to its increased value. I gave a lesser value to D than I did to A because the land is not serving or been developed as A has, and I don't mean developed in super-structures, I mean developed in land itself as regards to A, and as regards to B' (T. 2081).

"Now, Mr. Spratt, I asked you to develop in this evidence the process whereby you related the sale of the Belt Railroad to outside parties at $1,500,000 to certain square

foot values on certain zones and in your answer you refer me to sales sheet 54, which does not cover that transaction at all, but covers a lease made in the year 1916 from the St. Joseph Stockyards Company to the St. Joseph Belt Railway Company. Now, Mr. Spratt, is that all you can say as to the relationship of the sale of the Belt Railroad Company to outside parties and your valuation of 26 cents per square foot on Zone A, is that all the relationship?

"A. I want to make one correction. I said 'sales sheet 54.' It should have been sales sheet 55.

"Q. Yes, sir. Now, then, sales sheet 55 that you have referred me to is a sale on December 11, 1929, from the St. Joseph Stockyards Company to the St. Joseph Belt Railway Company of the right-of-way lands of the last named company. Now, how does that transaction connect your value of 26 cents per square foot for Zone A with the price of $1,500,000 paid to the St. Joseph Stockyards [fol. 1625] Company for the capital stock of the St. Joseph Belt Railway Company?

"A. I stated before recess that this sale was corroborative of my values placed on these zones. I will restate that this sale of the land occupied by lease by the St. Joseph Belt Railway Company and purchased from the St. Joseph Stockyards Company in order that they might consummate their sale of the entire property, is corroborative (T. 2082) of my value on Zone A.

"Q. Now, then, as I understand it, you are basing your value on Zone A on this sale shown on sales sheet 55, which is a sale of the right-of-way lands from the Stockyards Company to the Belt Railway Company, is that correct?

"A. I did not say that.

"Mr. Strack: I suggest——

"Mr. Bohannan (continuing): All right, now, then, as I understand it, you are not basing the 26 cents per square foot on that sale?

"A. I said that I have placed a 26 cent value and that this sale following my last four or five years of valuing on this corroborates and establishes my value as approximately correct.

"Q. Now, as I understand it, your 26 cents per foot on Zone A is your value for that zone, based on nothing in particular, is that correct? Is it or is it not?

"(Laughter.)

"Mr. Strack: Let the record show there was much laughter at this point in the proceeding.

"The Witness: Well, I spent 44 sheets here trying to tell the process by which I could and I have also included in this a great deal of testimony that was heretofore given in this case in 1929, giving the process by which I arrived at this value (T. 2083).

"Q. And those values then are based on your report [fol. 1626] and evidence and testimony in the 1929 hearing, plus your report and testimony in this hearing.

"A. Yes, sir.

"Q. All right. Now——

"Mr. Rynder: From the investigations beyond those reports.

"The Witness: Plus my report here and these 153——

"Mr. Rynder: I mean, of the investigations that led up to those reports.

"The Witness: Oh, yes, sir.

"Mr. Bohannan (continuing): Now, Mr. Spratt, I take it that you regard this transaction shown on sales sheet 55 as corroborating you?

"A. Yes, sir, 82.356 acres, having been sold, for which cash was paid, and coming in between my previous appraisal and this date, I consider that it is corroborative and very materially establishes the correctness of my estimate of values.

"Q. Yes, sir. Now, suppose this figure which I note at the bottom of sales sheet 55, reading 82.356 acres, $1,020,499.05, suppose that it had in fact been $20,499.05, that is, a million less, would that have had any effect whatever on the square foot value you would have placed on Zone A?

"A. It was not that, and I cannot consider it that way.

"Q. And you cannot answer whether a different value stated in that sale would have affected your price for Zone A, your value for (T. 2084) Zone A?

"A. I do not try to answer it that way.

"Q. You do not know?

"A. I don't try to answer it, when it is not in accordance with facts.

"Q. And you do not know whether that stated price of $1,020,499.05 had any effect on the square foot price which you placed on Zone A?

[fol. 1627] "(Whereupon, the question, as heretofore recorded, was read by the reporter.)

"A. Well, I have stated before and I will restate it, that previous to the sale of this land belonging to the Stockyards Company and the Belt Railway Company, in order that they might consummate their sale, I had valued the ground at 30 cents per square foot, the ground was carried, the value of the ground was carried on the St. Joseph Stockyards Company's books at an appraisal made even previous to my appraisal, made by the American Appraisal Company at $1,020,499.05. That too was corrobative of my value of 30 cents per square foot and the Stockyards Company, after receiving the cash for the sale of the land to the Belt Railway Company, credited to their land account $1,020,499.05. That too was corroborative of my value of 30 cents, or 26 cents per square foot.

"Q. But, Mr. Spratt, as I understand you now, you placed a value of 26 cents per square foot on the land before this sale took (T. 2085) place, and the sale merely corroborated you, is that it?

"A. I placed a value of 30 cents per square foot before this sale took place.

"Q. Now, what does this sale corroborate, 30 cents or 26 cents?

"A. Both of them.

"Q. But you cannot analyze this sale and show how it corroborates either 30 cents or 26 cents, isn't that correct?

"Mr. Rynder: I submit the witness has answered that question three times.

"Mr. Strack: How many times did you say?

"Mr. Rynder: I said three, maybe I am wrong?

"Mr. Strack: I think so.

"The Witness: I do not try to process my mind——

[fol. 1628] "Mr. Rynder: I would advise the witness not to answer a question of that kind "yes" or "no."

"Mr. Bohannan: I would like to have an answer.

"Mr. Rynder: Read the question, and I advise you not to answer a question of that kind "yes" or "no." I wish you would read the question.

"(Whereupon, the question, as heretofore recorded, was read by the reporter.)

"The Witness: Well, I started to say a little while ago and was interrupted, that I have no means of processing my mind into the details of that character (T. 2086).

"Mr. Bohannan: Mr. Examiner, I am bound to protest. This witness has been brought here to appraise and place values on these lands. I am asking him questions as to how he arrived at those values. I can get no answers to those questions. Now, I think, in all fairness, the Government is entitled to have a witness who comes appraising property in a rate proceeding, to answer fairly and fully and candidly questions as to how he arrived at his values. The witness, in his report, says that these transactions I am asking him about are the very transactions that bear most closely on the value of this land, and now I am asking him to relate these things to the value of the land, and to show how there is any connection between the $1,020,499.05 and the 26 cents per square foot he places on Zone A, but he will not tell me whether he can analyze the matter and show that or whether he cannot. He just simply evades it. Now, I think I am entitled to have answers to my question and not have to be asking and asking and asking the same question over and over, in a vain endeavor to get it answered.

"Mr. Strack: I submit he has had a full and complete answer each and every time, not one time, but every time. The trouble with counsel is that he wants one kind of an answer and when witness refuses to make that specific [fol. 1629] answer, he wants to ask it again, in the hope that the witness will slip in a word that will tend to confuse. Mr. Spratt has been just as straightforward as any witness on this stand, and I resent the insinuation that he has not been straightforward.

"Mr. Rynder: I wish to add that we desire to show the utmost courtesy to counsel for the Government. If he wishes to continue his (T. 2087) protest, we will be willing to have him continue his protest for an hour or two, or the rest of the day.

"Mr. Bohannan: I consider it is for the Examiner to conduct this proceeding.

"Mr. Rynder: Well, we quite agree with that, and it is not for Mr. Bohannan to conduct it.

"Mr. Strack: Can we proceed, Mr. Examiner?

"The Examiner: Yes, sir; as I understand it, there is no question pending.

"Mr. Rynder: We have no objection to campaign speeches from Mr. Bohannan, if he wants to make them. We wish to show the utmost courtesy in that respect.

"Mr. Bohannan (continuing): Now, Mr. Spratt, we are right back where we started. I asked you about the sale of the capital stock of the Belt Railroad Company to an outside interest, and asked you how you related that to the price of 26 cents, or the value of 26 cents per square foot on Zone A, and, for quite some time, you have been telling me something about, not much, but something, about how you related the sale by the Stockyards Company to the Belt Railway of the Belt Railway right-of-way lands, and that was not what I asked you in the beginning at all. It was another transaction entirely. Now, will you go back to that other transaction and tell me how you related that to your value of 26 cents per square foot?

[fol. 1630] "Mr. Strack: I think he has answered that specific question time and again (T. 2088).

"Mr. Bohannan: The record will show.

"Mr. Rynder: Mr. Spratt, can you add anything in answer to this question than you have not already stated in response to the previous questions of counsel for the last hour?

"The Witness: I can add that I am not accustomed to being reprimanded for trying to tell the truth, and I am not just pleased that I should keep on repeating, and attempting to repeat and say over again in different languages.

"Mr. Rynder: Of course, we have to sympathize with you in that respect. We cannot help you, but what I am asking is whether you can add anything to the answers you have previously made.

"The Witness: I can repeat them, that is all I can do.

"Mr. Bohannan: Now, Mr. Examiner, can I have an answer to my question?

"The Examiner: Mr. Bohannan, as I understand it, Mr. Spratt says that he has answered the question as fully as he can. Is that correct, Mr. Spratt?

"The Witness: Yes, sir.

"Mr. Bohannan: Mr. Examiner, I find myself in this position: apparently the witness will not answer my ques-

tions. I can keep on asking them but it is simply taking time in the record. I have asked this witness time and time again to show, by analysis, how he relates the sale of the Belt Railway Company's capital stock for a million and a half dollars to the value of 26 cents a foot placed by him on Zone A. Now, Mr. Examiner, in all fairness, I submit this question to you,—has (T. 2089) the witness done that?

"The Examiner: Mr. Bohannan, I have not studied this thing like you counsel have, or like this witness has. All [fol. 1631] I can say is the witness says that he has answered the best he can.

"Mr. Bohannan: Then, when I ask him if he can relate the thing by analysis, I cannot get any answer to that. He will not tell me whether he can or cannot.

"Mr. Rynder: Mr. Examiner, let me suggest this: that there is a procedure prescribed by law, that the Secretary of Agriculture may require a witness to answer a question, if he refuses to do so. We are perfectly willing to accept that, but Mr. Bohannan wants to try and force a further answer on this question.

"Mr. Bohannan: Well, Mr. Examiner, at this point, I am going to move to strike all of the testimony of this witness and to exclude from the record his report which has been offered as Respondent's Exhibit 132, on the ground that the witness refuses to answer proper questions put to him on cross examination.

"The Examiner: Motion to strike denied.

"Mr. Bohannan: May I ask the Examiner to give me a five-minute recess?

"The Examiner: Yes, sir.

"(Whereupon the hearing recessed for five minutes.)

"Mr. Bohannan: Mr. Examiner, in view of the refusal of the witness to answer proper questions on cross examination, further cross (T. 2090) examination will be a vain and useless procedure, and, therefore, we will not further cross examine.

[fol. 1632] Redirect examination:

On the picture which is page 1 of Respondent's Exhibit No. 132, as explained in the last sentence in the first paragraph on page 3 of that report, certain things have been placed on the photograph in pen (T. 2091). Those things

are readily discernible by looking at the photograph. The tannery that was referred to on cross examination was closed before the hearing in 1929. Page 2 of the report attempts to show the railroad service at St. Joseph, and not at other points. As indicated in the left hand corner, at the bottom of the page, it shows the connections of St. Joseph with various locations, towns and cities in America.

On cross examination I named John S. Brittain Dry Goods Company as having gone out of business. That should have been John S. Richardson (T. 2092). Quite a number of industries have come to St. Joseph in the last decade which would take the place of these wholesale houses. Amongst them would be the Quaker Oats Milling Company, which employs many many more times the amount of people employed in the wholesale houses; the development of the Western Tablet Company, which is an extensive employer of labor; the Insoboard Company, and a number of new industries which abundantly supply the place occupied by the wholesale trade and business that has gone away. Of this change in the wholesale situation, one of them occurred since the last hearing and the others were probably before the last hearing. Since the last hearing the wholesale meat district has moved from 4th and [fol. 1633] Sylvania to the stockyards itself, on Packers Avenue near Illinois Avenue (T. 2093).

When I mentioned the availability of land near Packers and Illinois Avenues for manufacturers of feed, I referred to companies similar to the Famo Feed Milling Company. It was not my intention to say that the land would be more valuable if the feed mills were actually there. The feed mills company would want to be there on account of the value of it now, or its accessibility. This land is not available now because the Stock Yards Company under no circumstances would permit it to be so used. Such availability would be subject to the wishes of respondent. It would require an entirely new adjustment of respondent's facilities. It is entirely up to the Stock Yards Company (T. 2094).

The traffic in the vicinity of Zone A results from the packing houses, respondent, and all those industries that are kindred and located there. The livestock business, including the packing business and transportation of both types, have drawn that traffic there. That traffic is what

I would call a trading traffic. They haul in and they haul out, especially through the truck service. They buy and sell livestock and the finished product of livestock. In my opinion all of the value of Cherokee Street and Illinois Avenue in what we term the retail district is reflected value from the stockyards and packing houses (T. 2095). If the Stock Yards Company would permit it, I would judge that land near Packers and Illinois Avenue would be very inviting places for filling stations, as filling stations are continuously seeking traffic centers, and rather inviting prices have been paid for land and rental in places more remote than that corner. I have in mind that the Sinclair Company is leasing a location on a rental basis from the Belt Railway Company, near Zone C, which capitalizes about $21,000 [fol. 1634] per acre. Packers and Illinois Avenues, if it could be obtained, would be worth many many times what that is.

When I said Felix Street could not be sold, it was because it is public property and not that it has no land value. That does not mean that Packers and Illinois Avenues have no actual land value (T. 2096). Undoubtedly both of those streets have actual land value. I have appraised both of those streets. I have not appraised Felix Street.

The land occupied by Zone A has particular adaptability for stockyards use and I have taken that into consideration in appraising Zone A. By reason of the fact that Zone A is being used for stockyards purposes, I have not added any theoretical multiplier, due to acquisition or condemnation cost. That is also true as to the other zones being used for stockyards purposes. In connection with the statements I made regarding lesser values placed on Zones B, E, and D, I had in mind that they are not topographically of the same level as Zone A, which likewise applies to Zone C, F and N (T. 2097). Zones 1 and 2, I think, are substantially of the same level as Zone A. They are the proper level anyhow in comparison with the various grounds around them. They would be classified along with Zone A as filled land, completely filled up to establish grades.

Thereupon, counsel for the Government renewed their motion to strike all of the testimony of the witness on the ground that he would not, on cross examination, answer proper questions put to him by counsel for the Government, and, therefore, in effect, refused to submit to cross exami-

nation on proper, material and substantial matters. Counsel for the Government also objected to the introduction in evidence of Respondent's Exhibit Nos. 132 and 133 on the same grounds on which they moved to strike the wit- [fol. 1635] ness' testimony, and on the further grounds that the said exhibits and the witness' testimony show that the conclusions expressed in the exhibits were arrived at by methods contrary to the law of the land for the valuation of land for rate making purposes. The respective motions of counsel for the Government were denied and the respective objections overruled by the Examiner (T. 2098).

Land Values

THEO. J. QUINN, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

I live in St. Joseph and have lived there about 28 years. I am in the real estate business and have been in the brokerage end of it since 1922. Prior to that time and before the war I was in the discount department of a bank located in this city, the Empire Trust Company, at a time when that bank was making a large number of real estate loans. My work did not have anything to do with the making of those loans at that time, but I was familiar with each and every one of them (T. 2099). I kept records of the loans, more as a discount policy. I was in the World War and have been active in the American Legion since the war, serving one year as commander of the local post. Since 1922 I was with the H. S. Smith Investment Company as an employee on a commission basis for about three years, and since that time have been operating with Robert E. Gardner under the firm name of Gardner & Quinn. While with the H. S. Smith Investment Company my work was brokerage of real estate entirely, including residential property, retail, industrial, and subdivision (T. 2100). By that I mean I was in the business of buying and selling property, acting as a broker. [fol. 1636] Since my connection with the firm of Gardner & Quinn my business has been very much the same type, and in addition we have our own insurance business. We

have brokered loans and do appraisal work. Our firm has been employed on many occasions by local and foreign corporations to purchase real estate. That is particularly true of various oil companies operating in this vicinity. We have had charge of the recent location or expansion program of the Shell Oil Company, Mid-Continent Petroleum Corporation, Independent Oil Company, Skelly Oil Company, and Sinclair Refining Company, and at the present time and for the past two months, we have been employed in leasing a number of properties for two or three other companies (T. 2101). I have done considerable work in appraising real estate. I have been a member of the Real Estate Board since its organization here about ten years ago and have served at various times on the appraisal committee. I shared in the appraisal of some $200,000 worth of property taken over by the city for school purposes and also appraised the Sinclair Refining Company's holdings about four years ago. That is, by their holdings, I mean real estate. I have been employed by owners of property that had been taken by the State of Missouri for highway purposes; and as director and an officer at various times of the Real Estate Board, I am familiar with all of the appraisals made during that time by the Board. I have also been employed by the supervisor of building and loan associations and the receivers of building and loan associations to appraise properties that have been taken over by the receivers or by the associations in this part of the State. At various times I have offered court testimony in the above cases, and as a member of the Real Estate Board Committee I have just completed last month an appraisal [fol. 1637] for the St. Joseph Railway, Light, Heat & Power Company, which comprises the valuation of all real estate owned by this organization, and included their interurban right-of-way between St. Joseph and Savannah (T. 2102), Missouri, about 16 miles north of here. The Real Estate Board was asked to make this appraisal for rate-making purposes, asked by the State Public Service Commission, and the Committee was comprised of three members, Mr. William E. Spratt, Mr. Joseph Corby, and myself. We were chosen and agreed upon by the Public Service Commission, the City of St. Joseph, and the Street Railway Company. Those three interests agreed to be bound by the findings of this committee. On an appraisal such as this,

the appraisal committee is always checked by the directors of the Real Estate Board, and in this particular case the results were checked and agreed to unanimously by the members of the directorate (T. 2103.)

During the period of my residence in St. Joseph and while I have been in the real estate business, I have been familiar with what is known as the stockyards district near South St. Joseph. My real estate dealings have extended to that district, having sold a good many properties in the neighborhood and vicinity of the stockyard. My appraisal experience has extended to that district. In the appraisal of the Street Railway Company's properties, there were some three or four parcels in that immediate vicinity.

I was asked about November 1, 1932, by respondent to appraise the land it now owns, and have made such an appraisal. Since that time there has been scarcely a day that I have not (T. 2104) done some work on that appraisal. Probably in all, I think, it would be substantially a month's steady work. Before arriving at my valuation I did some preliminary work. I was first furnished a map by the [fol. 1638] Stock Yards Company showing the various zones that had been designated by Mr. Spratt at the time of the former hearing and which, I understand, were approved and adopted by the Secretary of Agriculture in his decision. The areas, I understand, had been recomputed by representatives of the Stock Yards Company, due to sales and resurvey, and I also believe that the areas of the zones were the subject of agreement between the Stock Yards Company and the Government engineer. And, then, I visited each and every one of the zones, going around them and through them and noting the contour and general lay of the ground, as well as the character of the uses the various zones were put to end the improvements on same. Then, I made the trip, a trip which I had made before, of course, on many occasions, from the uptown district to the stockyards, over the various routes, noting the accessibility of the zones for vehicular traffic and the facilities afforded by the Street Railway Company, railroads, and bus service, and after having done this, I was (T. 2105) furnished a group of sales sheets that had been computed, or compiled rather, by a local abstractor, to which the Government appraiser, Mr. Zelinski, made some additions. In all, they totalled 147, I believe. Then, in company with Mr. Zelinski

and Mr. Spratt, we spent the greater portion of perhaps a week interviewing grantors and grantees in all but the first 53 of these sales, ascertaining, as well as we could, the conditions attending the various transfers. These first 53, I understood, had been previously investigated by Mr. Spratt and a representative of the Interstate Commerce Commission, and it was agreed among ourselves, that is, Mr. Spratt, Mr. Zelinski, and myself, to accept the results of this investigation relative to these first 53 sales. I then personally, part of the time with Mr. Spratt and Mr. Zelin- [fol. 1639] ski, and on several occasions by myself, inspected the premises covered by virtually every one of the sales shown on sales sheets No. 1 to 147 inclusive (T. 2106).

Shortly after the middle of November, about the 18th of November, I think it was, I went to Omaha and while there interviewed Mr. Lewis C. Sholes and Mr. Albert Tukey, the gentlemen who, I learned, had appraised the stockyards property for the Omaha Stockyards Company sometime previously. Mr. Sholes took me down to the stockyards in his car, and we drove completely around it and in and through it and spent some time with Mr. Schellberg, who is president of the Omaha Stockyards Company, at his office in the Exchange Building. I learned that these two gentlemen had made a very complete appraisal of the Omaha stockyards, and it was my intention to discuss with them the various methods that they used, and felt that it would be helpful to view other stockyards property and to discuss various questions arising in appraisal work with those who had had recent experience in this kind of work. I chose Omaha for the reason that it was close by and it was my understanding that it was the last stockyard that had been appraised. I talked with these two gentlemen with a great deal of interest, particularly because it is my understanding that Mr. Sholes is a member of the National Association of Real Estate Board's Appraisal Division, and, of course, discussing these matters with a man of that standing made it particularly instructive to me, I felt.

I was elected president of the local real estate board shortly after the first of the year (T. 2107) for the calendar year 1933, succeeding Mr. Spratt. I have made studies and familiarized myself with publications dealing with the appraisal of real estate. The National Association's Journal, which is published bi-monthly, carries from time to

[fol. 1640] time articles on appraisal work, which I read with interest. I have also read a tome by Mr. Zangerle and by Mr. Stanley L. McMichael, both of whom are considered authorities in real estate appraising.

I have completed my appraisal of the lands owned by the respondent and have prepared and submitted to respondent the appraisal report, which is Respondent's Exhibit No. 134 (T. 2108). That exhibit was prepared by me personally and truly and correctly sets forth my opinion of the value of respondent's lands. The areas for zones were given me by the respondent, and I understand they are agreed areas. The zones are the same as used by Mr. Spratt and adopted by the Secretary, although there have been some changes in the area of these zones but not in the boundaries. Those changes were due to sales and a resurvey (T. 2109). At the time I was retained to make the appraisal, Mr. Topping asked me to make an attempt to use these same zones, with the exception that I could rezone them or resubdivide them in any manner that I saw fit. His desire, as I understand it, was that when I had completed the appraisal, it would be possible to have some relationship between the zones I was using and the zones used by Mr. Spratt, and it is my understanding that Mr. Zelinski was asked to do the same thing and agreed to do so. (T. 2110). I did not make any subzones because I felt that the zoning used by Mr. Spratt and Mr. Atkinson in the former hearing was sufficient and represented distinct break lines of value, and felt there was no necessity of making a further rezoning, or rezoning it further. The zones that are outlined in red on page 9 of Respondent's Exhibit No. 134 are the zones respondent is claiming as used and useful land. Those outlined in yellow are not claimed. Mr. Topping gave me that information, and I am not responsible for that designation in any manner whatso-[fol. 1641]-ever. In Respondent's Exhibit No. 134 I have completely set forth the method used by me in arriving at the value of respondent's land. The summary in which I have given my opinion of that value is on page 10 (T. 2111). The statement of the method used appears on pages 4 to 6 inclusive. On page 6, I refer to the sales sheets 1 to 147, which form a part of Government Exhibit No. 128 and which are the sales sheets Mr. Spratt, Mr. Zelinski, and I investigated. I understood that they were to be in-

corporated in the Government report, but Mr. Zelinski and I saw no need of the duplication. I considered the same transfers that were set forth in sales sheets 1 to 147 and in Government Exhibit No. 128.

I was aware that Mr. Spratt was also employed by respondent as a land appraiser. We did not cooperate in any manner except as to the investigation of these 147 transfers (T. 2112). I was not at all influenced by Mr. Spratt's opinion as to the value of this land owned by respondent, nor did I discuss with him the value of that land, until after we had compiled and turned in our reports. At that time we exchanged values, but as a result of that exchange I did not alter my values at all. I have not altered them since I turned in the report, nor since we exchanged values. I have not been influenced at all by respondent or any of its officers or employees in the making of this appraisal. The summary which appears on page 10 represents my own personal opinion of the value of respondent's lands (T. 2113).

[fols. 1642 & 1643] RESPONDENT'S EXHIBIT No. 134

Below appears pages 10 and 9 of Respondent's Exhibit No. 134, which respectively show the summary of the valuation by Mr. Quinn by zones and the map upon which the location of each of these zones appears.

Zone	Acres	Square Feet	Sq. Ft. Rate	Acre Rate	Zone Value
A	72.249	3,147,163	.35c	$15,246.00	$1,101,507.05
B	17.293	753,286	.15c	6,534.00	112,992.90
C	24.655	1,073,972	.12½c	5,445.00	134,246.50
D	11.436	498,152	.12½c	5,445.00	62,269.00
E	10.283	447,927	10c	4,356.00	44,792.70
F	45.951	2,001,626	.05c	2,178.00	100,081.30
F-1	.874	38,071	.01c	435.60	380.71
G	22.752	991,077	.03c	1,306.80	29,732.31
H	10.313	449,234	.04c	1,742.40	17,969.36
I	9.400	409,464	.04c	1,742.40	16,378.56
J	24.873	1,083,468	.02c	871.20	21,669.36
K	16.083	700,577	.015c	653.40	10,508.66
L	18.316	797,843	.01c	435.60	7,978.43
M	12.516	545,197	.005c	217.80	2,725.99
N	56.412	2,457,322	.08c	3,484.80	196,585.76
1	.544	23,697	.50c	21,780.00	11,848.50
2	3.190	138,956	.15c	6,534.00	20,843.40
3	14.362	625,609	.10c	4,356.00	62,560.90
	371.502	16,182,641			$1,995,071.39

[fol. 1644] In my appraisal I did not include anything but the bare land value. I did not include in the land value what is known as going-concern value. I followed, as well as I could, exactly the same method which I used in arriving at the value of other lands in the course of my experience as a real estate appraiser where I valued the land for rate-making purposes. In appraising real estate, in order to find the true value thereof, there is not more than one kind of true value. The figures on page 10 of Respondent's Exhibit No. 134 represent my opinion of the true value of respondent's land.

The land occupied by Zone A has peculiar adaptability or availability for stockyards use, and I have taken that into consideration in my appraisal (T. 2114). I have likewise taken into consideration, in respect to other zones, any particular adaptability that they may have for stockyards use. Generally the zones that lie within the circle of the belt are more particularly adaptable or available for stockyards use. Zone A, of course, is the particular zone. These other zones within the belt would have adaptability or availability for stockyards use in a less degree than Zone A. By reason of the fact that Zone A was being used for stockyard purposes, I have not added any theoretical multiplier due to acquisition or condemnation cost (T. 2115).

Cross-examination:

My service in the Army during the time of the World War had no connection with the appraisal or other handling of real property, nor did my membership and office in the American Legion, except as it throws me in contact with a large number of property owners and prospects who have dealings in property. These things do not in any great measure add to or take away from my qualification to ap-[fol. 1645] praise respondent's land. My membership in the Real Estate Board's Appraisal Committee for several years refers to the St. Joseph Real Estate Board. That committee has been called upon to make appraisals for rate-making purposes since I have been a member (T. 2117). The only case that I shared in for rate-making purposes is the appraisal made by the Appraisal Committee of the St. Joseph Real Estate Board for the St. Joseph Railway, Light, Heat & Power Company, which company operates the street railway in St. Joseph and furnishes

electricity to the inhabitants of the city and steam heat to a part of the downtown district. This appraisal covered all of the land of this company, and the proceeding has to do with rates, I think with the particular service of furnishing power. The appraisal was made by the committee of three that was chosen to act as the appraisal committee in that particular case (T. 2118). The number of members which constitutes the appraisal committee of the Real Estate Board is varied from time to time. It has been the practice of the president of the board in the past few years to pick a group of nine members from the membership, and three of those are chosen, from time to time, to serve on different committees as the appraisal committee for that particular job. In this case, however, the entire membership of the Board was submitted to the Missouri Public Service Commission and they were asked by Mr. Spratt, who was president of the Board at that time, to choose three members, and when those members were chosen, they would be appointed as the appraisal committee for that particular job, and, in turn, the interested parties, that is, the Light Company, the Service Commission, and the city agreed to be bound in so far as the valuation of the real estate was concerned by the findings of that committee, whose findings, in turn, as stated in [fol. 1646] my direct examination, were reviewed by the directors of the Real Estate Board. Relative to the employment of the committee, it is my understanding that a request first came to the (T. 2119) Real Estate Board from the engineer of the Missouri Public Service Commission. That appraisal was completed along about the latter part of November or the first of December. There were three members of the committee, and their findings were reviewed by the Board of Directors of the Real Estate Board. The members of the committee all worked together in making the appraisal (T. 2120). As well as I remember, the Board of Directors agreed unanimously with the findings of the committee. That is the only appraisal for rate-making purposes that I have made other than the appraisal of the respondent's land.

I started the appraisal of respondent's land around the first of November, 1932. My letter addressed to the Stock Yards Company, which is page 1 of Respondent's Exhibit

No. 134, would indicate that it was finished on December 31, 1932. I do not know that I reached my conclusions as to value at that particular time. It was a short time previous to that (T. 2121). In addition to joining with Mr. Spratt and Mr. Zelinski in interviewing the parties interested in the real estate transactions which have been spoken of as sales in the vicinity of the stockyards, I frequently went down there by myself through the various zones, paying particular attention to the uses that they were put to. As indicated in my direct testimony I went to Omaha, went across, made what you might say a cursory examination of the stockyards there just in passing, talked with the men, the two men who had appraised the Omaha stockyards property. Specifically referring to my appraisal of respondent's land, I can cover the work, other than that which I [fol. 1647] did in company with Mr. Spratt and Mr. Zelinski, by saying that I went down there myself frequently, and I do not know whether it is too comprehensive to say that I made my own (T. 2122) individual study, but that in a word is what I did do. I did not consult with Mr. Spratt relative to prices. We discussed the situation together much in the same manner as Mr. Spratt and I discussed it with Mr. Zelinski, but each of us arrived at our values unknown to the other and without consultation as to what the values should be. I might say in that connection that I know that Mr. Spratt was extremely conscientious in that. I tried to be myself, and I think I succeeded in being so, and I don't believe until we had finally compiled our report that either one of us had any idea of what the other's values were to be.

The larger portion of my real estate business has been composed of buying and selling and renting real estate as agent for others. I have dealt in very little real estate on my own account, that is, very little in comparison with the bulk of our business (T. 2123). I have not developed any subdivision or anything of that kind on my own hook. I helped, of course, to sell subdivisions as agent for the owners who developed them.

I do not include in my land value the value of any structures that were either in the land or above the land. I would think that would have been a duplication of Mr. Kosters' work. The valuation that I put on Zone A and on the other zones was as of vacant land entirely. As to

whether I gave any weight in my valuation to the use that is being made of the land, I have not been able to distinguish between the terms weight and consideration. I do not know whether my interpretation of weight and consideration would be the same as yours (T. 2124), but I will say that I did give the use that the various zones were put to, and are being put to, consideration. I gave this sort of [fol. 1648] consideration to the fact that the various zones are being at the present time used. I looked at the land, to paraphrase Mr. Zelinski's explanation of it, so as to divorce my mind entirely, or at least as well as I could, from the fact that the zones were being put to some certain use and found my values with that in mind, then when I realize and understand and know and am entirely conscious of the fact that these zones are being used, very evidently have been profitably used over a long period of time, I find that in my mind (T. 2125) it tends to substantiate and corroborate the values that I put on the various zones that are being used. With reference to my statement that there is only one value to a given piece of land, there are in the minds of a number of people who deal in real estate a number of various kinds of values, there is the sentimental, the market value, and trading value, and so forth, and various values of that kind, and my idea of the true value must of necessity go back to the old, you might say shop worn, definition of value, which is the price that land, that property will bring from a man who does not have to buy, and owned by a man who does not have to sell. In other words, that value is what a willing seller would pay and what a willing buyer would give. I would say that really represents its market value, but not necessarily at the time the valuation is made. A willing buyer might very likely be able to see values that would accrue in the future and would be willing to pay more than (T. 2126) a piece of land would normally be expected to bring at a time like we are going through at present. I think what a willing seller would take and a willing buyer would give is a consideration that I can say I gave weight to. I stated on page 5 of Respondent's Exhibit No. 134, "In considering values of properties owned by the St. Joseph Stock [fol. 1649] Yards Company, it has been impossible to eliminate completely from mind conditions that obtain today in values of every known commodity. Nor is it my intention

to entirely divorce from mind proper consideration of these conditions with which we are confronted. Rather has it been my intent, in so far as it is possible to explain one's mental processes, to recognize the fact that the conditions have a direct bearing on values and to properly recognize these elements without being overly influenced or placing undue emphasis on so-called forced or distress sales, foreclosures, and so forth, that may have occurred in the immediate vicinity of the property being considered." Then I say in the next paragraph, "Neither have I stressed or been solely guided by sales made in vicinities contiguous to stockyards properties that are obviously higher in unit values than could be obtained on today's market" (T. 2127). I tried to keep in mind the fact that the whole country is in what we might call a stagnant condition now and that it would be almost impossible to sell anything now at most any price, and my values represent an idea of the rule of the willing seller and the willing buyer under reasonably normal conditions (T. 2128).

By going-concern value, referred to in my direct examination, I mean the value that would inhere to a piece of property for the reason that it was occupied and being put to use by an organization of some kind or other.

None of the zones of respondent's land which lie outside the ring of the Belt Railroad compare with the zones which lie within the ring of the Belt Railroad as to adaptability for stockyard uses. I would say that all those outside the ring would need considerable in the way of filling and work of different kinds before they would become adaptable in the degree that those within the ring are adaptable. In making my valuations of zones outside of the ring of the Belt Railroad and west of the Trunk Line Railroad, I gave [fol. 1650] such weight to the adaptability of those zones for stockyard uses as I thought in my mind they were entitled to (T. 2130). As to the weight I gave on account of adaptability for stockyard uses to all lettered zones other than A, B, E, and D, I gave them the weight I thought they were entitled to for availability for stockyard purposes as well as any other purposes to which they might be put (T. 2131). I gave some little weight on account of adaptability for stockyard uses to Zones F and C, and very little to any of the others, very small weight to Zone N, and as to the zones that lie south and west of Zone A, very small weight

or even consideration. By my statement on direct examination that I gave no consideration to a theoretical multiplier, due to acquisition or condemnation cost, I mean that I applied no specific percentage nor no specific figures to the values of the properties for the reason that they represented an assembled tract readily available, and part of it being used for stockyard purposes.

With reference to the 147 real estate transfers which were investigated by Mr. Spratt, Mr. Zelinski, and myself, I do not believe I could single out one transfer or sale and say that I gave it more weight than all of the others or any of the others (T. 2132). The transfers that have occurred and which we inspected, reviewed in the vicinity of Illinois Avenue and Cherokee Street, and some of these back in the neighborhood of Zone N, I would say that I gave as a group those that I have mentioned perhaps a great deal more weight and consideration than those, for example, to the north of Cherokee Street, and to the few we looked into south of Illinois Avenue. As to whether I gave any particular transfers more weight in arriving at my value of Zone A than I gave to transfers generally, I would say that [fol. 1651] *that* I considered as being in a degree similar, the sales of the land, of various transfers in the neighborhood of Cherokee and Illinois, and probably gave them more consideration and more weight than some of those that are more remotely removed from that particular area, either to the north or to the south.

Referring to supplemental map No. 3, in Government Exhibit No. 128, the transfers to which I have just referred as being those to which I gave more particular weight in determining the value of Zone A are 35, 38, 41, 39, 40, 91, 42, 43, 44, 50, 48, 49, and 46 (T. 2133), and included in that group, of course, is the Belt sale, which is sale No. 55. I gave to the various leases which preceded that sale, one of which is listed as sale No. 54, perhaps somewhat the same weight and consideration that was given the actual sale itself. I did not give the sale by which the St. Joseph Stock Yards Company transferred the capital stock of the St. Joseph Belt Railway Company to an outside interest any consideration at all (T. 2134) because I knew nothing about it. After I had made the studies which I regarded as necessary and was ready to make up my mind as to the value of Zone A, I did not do so by the use of any approved

mathematical formula. As to any explanation I can give as to why I reached 35 cents per square foot rather than, let us say, 30 cents or 40 cents, that would be to take you back through the processes that went on in my mind in determining that value. It would be an extremely difficult task and I do not know that I could do it. I took the sales as we investigated them. We did our best to learn the different conditions that attended each and every one of them, especially those that were applicable or, we felt, in any way influenced or were influenced by values in the stockyards; and I tried to paint a picture in my mind of the [fol. 1652] situation as it existed, and would determine almost, one by one, what the values were in the neighborhood, how they should be applied to the value of the ground in Zone A, or any of the other zones, as far as that is concerned, and finally determined that 35 cents was, in my opinion, as it referred to that particular zone, a fair price. Now, while it probably does not come within the scope of your question, I could be more specific, I think, in Zones G, H, and I (T. 2135). The ground in those zones is contiguous to Kirschner's Addition. It is much the same character of ground, served by the same facilities, as far as roads and rail service is concerned, and in that case, I found it rather an easy job to transplant the values that actually were shown in transfers in that division over into those zones. In the other zones, of course, it was, for me at least, much more difficult to do that. To the extent that I could do it, I did it for the other zones.

During my studies of the matter I read some of the testimony in the previous hearing in this case as to land value. I read the testimony of Government witness Mr. Walter Mack, and also that of Mr. Spratt and Mr. F. M. Atkinson. I read both the abstract and the transcript of testimony. I think it appeared in Mr. Mack's testimony that he placed in 1929 a value of 35 cents per square foot on Zone A, and Mr. Spratt and Mr. Atkinson put a value of 30 cents a square foot on the same zone (T. 2136). I do not believe that those appraisals had any influence at all on the value that I placed on the land in 1932. I suspect that if I were to be influenced and thought those values to be correct at that time, that my valuations would probably have been lower than they are at the present. Generally it is true that land values are actually lower now than

they were in 1929. Without any reference to Mr. Mack's or [fol. 1653] Mr. Spratt's testimony, I would think that the true value of Zone A today is less than its true value in 1929. As to the reasons which led me to the conclusion that Zone A was worth 20 cents per square foot more than Zone B, I do not know that I can recount all of them, but I would say that availability, or rather accessibility, is perhaps better in Zone A, and I have found it difficult to get away from the fact that people, and the assembling of people, the gathering of people, have a tendency to create values, and certainly in Zone A that is one factor (T. 2137) that probably is accountable for the difference of 20 cents, as much, probably as great a factor as any that I can think of at the present time (T. 2138). The things that occasion the assembly of people in Zone A are trading, people bringing stock to the market, purchasing stock, employees of the Stock Yards Company, the commission firms, and employees of packing houses who find it necessary several times a day to use the streets that are within the confines of Zone A. The assembly of people is on Illinois Avenue and to a lesser extent on Packers Avenue. Zone B, of course, has a degree of remoteness from the center of activities. It is much in the same position that a store in the retail district would be in around the corner from a so-called 100 per cent location.

With reference to that part of Packers Avenue adjacent to the land of the Hammond Packing Company, now operated by Armour & Company, I considered it a part of Zone A, and I felt that the fact that the streets are privately owned is one of the most valuable elements in that zone (T. 2139). I considered that street as a necessary part of the tract as it was zoned, for the reasons that it admitted of access to the Armour plant and helped to complete the picture as presented by that particular zone.

I have never had any experience in the actual operation [fol. 1654] of a stockyard. The closest I ever came to being employed in a stockyard was as a clerk in a stockyard bank as a youngster here in St. Joseph. That had nothing at all to do with the operation of a stockyard. I have never purchased any land for a stockyard, and this is the only stockyard land I have ever appraised. I have never sold any land for stockyard purposes (T. 2140).

I understand that there has been some falling off in the receipts of livestock at the St. Joseph Stock Yards in 1932 and 1931 as compared with the preceding years of 1928, 1929, and 1930. I gave that consideration in my valuation but no weight. I do not give weight to the intensity of use in the valuing of land, only to the extent already explained: My idea in this case was to reach what I thought a fair market value (T. 2141). If I were employed by one purchaser who intended to purchase a tract of land, and in another instance I was employed in a condemnation case to tell the court the fair value of a different tract of land, and in a third instance I was employed in a rate case to tell a commission or secretary or whoever was in control the fair value of the land, in the last two named cases my findings would probably be identical. In the first instance I would try to buy the land as cheaply as possible and suggest to my employer that he sho[illegible]so (T. 2142). If a client came in and wanted an a praisal on a piece of ground, whether it be ground that is subject to condemnation or ground such as this is or a ground that he intended to purchase, and came in and asked for a valuation on it, I would do my best to find exactly the same kind of a valuation in each and every case. That is my construction of only one kind of land value. The statement on page 4 of Respondent's Exhibit No. 134 that there is 18-minutes street car service every 7½ minutes means that it takes 18 minutes to go from 5th and Edmond to Illinois Avenue and [fol. 1655] Lake Avenue, and there is a car on an average of every 7½ minutes (T. 2143). As I remember it, the 7½ minutes' service is maintained for 18 hours during the day (T. 2144).

Redirect examination:

By my statement that I made an individual study of respondent's property, I mean I took into consideration the availability of it, to different utilities, street car, rail service, bus service, vehicular traffic, topography of the ground, and conditions of that character, its proximity to the packing house which it serves (T. 2144). By different utilities. I included sewers. In that connection I considered this property and compared it with each and every one of the transfers.

In my cross examination respecting depressed conditions existing at the present time, I did not mean to say that there is no sale of any kind possible at the present time for this property. That would not be true because at the present moment in the vicinity of Zone A I am negotiating a lease that will return the investor a 6 per cent net income on a value of something over $1.00 a square foot (T. 2145).

Assuming that going concern value means the value over and above the bare bones of the company, the term "bare bones," includes land value plus the value of the physical property and working capital, I did not include going concern value in my land valuation. If going concern value means the value of the business which respondent has, I did not include going concern value in my appraisal.

I stated that Zones F, C and N had some adaptability or availability for stockyards use. These zones have this adaptability or availability in a degree individually, but [fol. 1656]. also certainly in a varying degree with the zones within the Belt. By that I mean the availability or adaptability would be greater if they were used in connection with the zones within the Belt (T. 2146). If a stockyards were built on Zone N for example and had no connection with other stockyards to the south, it would not be such a good site. If the entire stockyards were to grow so as to require Zone N in connection with the land to the south thereof the adaptability would increase and likewise the availability.

I did not apply any multiplier to increase the value of Zone A for any purpose whatsoever.

In listing the transfers to which I gave weight in connection with Zone A, I intended to include the leases to the Shell Oil Company and the Painter Oil Company and also the leases (T. 2147) to Feuquay and the lease to Pearson (T. 2148). In considering transfers, comparisons of all kinds are necessary, such as the availability to utilities of all kinds, accessibility by roads, topography of the ground, rail facilities or trackage, highway facilities, and the character of the surroundings (T. 2149).

I did not make any appraisal of respondent's property in 1929. In making my present appraisal I did not find the value of that property in 1929. The statement I made that

values in 1932 are lower than in 1929 was merely a generality in conformity with the lower level of values in every commodity.

As to the difference between the appraised values of Zones A and B, I understand that the level of Zone A is generally from two to three feet higher than Zone B and that is one of the things I took into consideration in valuing Zone B as compared to Zone A (T. 2150). My value for Zone A is an average value for the entire zone. At the [fol. 1657] north end of it there is a tract that probably would not be, in my opinion, worth what the average value of 35 cents is. The same thing is true at the south end, including that portion there at the west end that lies, including along Packers Avenue just across the street, east from the portion marked "Nelson Morris and Company," and that would apply also to the streets that are remote from the center, such as the north and south ends of Packers Avenue, for example. There are certain portions of the zone that would be much higher which would be in the neighborhood of Illinois and Packers Avenues and would run generally from that corner east on Illinois Avenue to the Belt Railway Company's tracks and on Packers Avenue north from that corner (T. 2151). It is usual to find in various types of property sharp breaks in values from where more or less peak values exist. That might be shown by values that exist on a main business street. A very decided break occurs the moment you get around the corner, in most cases, from the main artery or the main business street. Shops and stores on side streets usually do not bring near the income, do not produce near the rent that those on the main street would (T. 2152). One also finds similar breaks where a street is used for business purposes and the next street east or west is used for residential purposes. Very much the same thing is true with varying residential districts (T. 2153).

Recross-examination:

Referring to the tract which I stated on cross examination for which I was negotiating a lease, the capitalized value of the rental being in excess of $1.00 a square foot, that tract is part of lots 13 and 14 in block 8, South St. Joseph Town Company's Second Addition, being the south-

[fol. 1658] west corner of Lake and Illinois Avenues, 65 feet on Illinois Avenue and 99 feet on Lake Avenue. A part of the corner is unimproved. There is a little building on the west side of the lot facing Illinois Avenue. Verbal agreements have been reached as to the rental price by the proposed lessor and lessee (T. 2156) and representatives of the lessor and lessee have agreed to pass their recommendation to the principals but the principals have not agreed upon it. By representatives I mean employees who are in a position to do things for the principals. The use of the building does not in any way enter into the rental that is to be paid. The building is to be torn down. The annual rental to be paid is $600 and the site will be used for a filling station (T. 2157). Had this lease been in the position where it could have been considered at the time my opinions were being formed I suppose that I would have given it some consideration and some weight. In many respects there is a degree of comparability between this land and the land being valued. It is comparable in the same respect that would make the corner of Illinois and Packers Avenues very desirable from a standpoint of an oil company occupying it for a filling station. I don't know whether Zone A could be sold for filling stations or not. It could as far as the oil companies are concerned. By that I do not mean that oil companies would be willing to buy the entire Zone A for the purpose of erecting filling stations (T. 2158).

Used and Useful Property

FRANK C. BLACK, a witness called by the respondent, being first duly sworn, testified in substance as follows:

Direct-examination:

I live in St. Joseph and am superintendent of the St. Joseph Stock Yards Company. I am the same person who [fol. 1659] testified in the former hearing and hold the same position now I held then, having been continuously so employed since the prior hearing.

By reason of my position as superintendent of respondent I have knowledge of the use which is made by respond-

ent of the various parcels of land and property owned by it (T. 2159). I am the same Mr. Black referred to by Mr. Christensen from time to time. My operations extend to the general office of respondent only in a small degree. Other than the manager I have no superior in respect to the physical operations of respondent exclusive of the work done in the general office. I am responsible for all of the so-called yard operations of respondent, which include all the operations necessary in conducting the business of a public stockyards. The employees that work out in the yards work immediately under me. I spend considerably over half of my time actually out in the yards going about the various facilities (T. 2160). In addition to my knowledge of the various parcels of land and property of respondent, I have made a particular investigation to determine the use and extent of such use made of each particular portion of the land and property of respondent. I have in my possession maps of the entire stockyards property, also other detail maps showing the areas occupied by the various structures. From these maps I labeled and scaled the areas occupied by the various structures and determined the use to which the property is put. The scaling of those maps was supplemented in case of doubt by actual investigations made by me or under my direct supervision. At the time of the prior hearing respondent employed an engineer but does not at the present time which has made some difference in the scope of my duties (T. 2161). I now perform some of the engineering services which Mr. Kosters formerly performed, although I am not [fols. 1660-1689] an engineer. I have acquired certain knowledge which enables me to perform certain of these services. When it is necessary to call upon technical assistants I do so. In such cases I work in conjunction with such technical experts, cooperating with them.

[fol. 1690] **Feedlots**

Referring to the statement on page 379 of the transcript where Mr. Christensen stated it was his understanding that respondent does not charge yardage on direct shipments if they are driven direct to the feed yards, and his further statement that he thought Mr. Black told him that, I did not make such a statement to Mr. Christensen. If I did

it would not have been a true statement of the facts. While that is primarily an accounting matter, still it has always been my understanding that the feedlots pay yardage on direct consignments. I would not tell anyone to the contrary because that is my understanding. In reference to the statement on page 384 that these feedlots are not used for sales purposes and that Mr. Christensen recollected I told him so, that is not a true statement, because I do [fols. 1691–1716] know that, particularly in regard to sheep (T. 2226), that practically all the sheep are actually sold in the feedlots. They are not sold any different than they are in the sales division. They are sorted and handled in exactly the same way as though the packer buyer were in the sales division buying and purchasing sheep. By that I mean they are sorted, graded, and chalked as if in the sales division. They agree on the price. They agree on the specific animals to be sold. That is the purpose of chalking, which means that the buyer by marking a chalk mark on the animal states he will take that specific animal (T. 2227).

[fols. 1717-1721] Baby Beef and Pig Club

The Baby Beef and Pig Club Show takes place at the same time. It is really one show. It lasts three days but the stock is here about a week from the time it arrives until it is disposed of. It brings revenue to the Stock Yards Company. The animals pay yardage over there the same as other animals (T. 2301). I do not know whether the revenue represents a fair return on the property used.

[fol. 1722] Sale of Feed

Animals that are trucked into the stockyards as a general practice eat less food per head than those arriving by rail. Mr. Gorman has made a study of this, which he will later introduce (T. 2316). The reason animals coming in by truck eat less feed as a general proposition than animals coming in by rail is because they have been in transit a considerably shorter period of time and, therefore, are not capable of taking such a fill as those with the longer haul. This study of Mr. Gorman indicates that trucked-in animals occasionally eat more alfalfa hay per head than rail ani-
[fols. 1723–1728] mals. That is because the animals ar-

riving by truck are practically all from nearby territory where they are fed alfalfa hay on the farm, and on arrival here are fed the same; whereas, the animals arriving by rail are principally from the grazing countries where alfalfa hay is not fed but to a very limited extent, and the animals are used to prairie hay and, consequently, they are fed prairie hay on arrival here. The rail animals eat practically no alfalfa hay, and with the truck animals, it is practicly the reverse. They usually eat alfalfa. In order to get the true comparison the volume of both would have to be considered (T. 2317). This should also be considered in connection with the per head receipts both by rail and truck.

[fols. 1729 & 1730] Feedlots

The sales of sheep take place in all feed lots in which sheep are fed. The packer buyer actually sorts the sheep and deals with the feeders as to the price that is to be paid, and the price is agreed on at the feed lot (T. 2334). If Swift's buyer would make a deal in the feed lot for sheep, the sheep would be driven to the stockyard and weighed, and the regular yardage would be assessed against the sheep. The sheep might go to the temporary holding pens, or they might not. Sometimes they would, and sometimes a portion of them would be driven direct to the killing plant. Again, they might all be driven direct to the killing plant.

[fol. 1731] C. F. Topping, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

I reside in St. Joseph and am president and general manager of respondent. I have been president for one year, but since January 1, 1930, I have been vice-president and general manager. For 20 years, I was secretary and treasurer of the Union Stockyards Company, Toronto, Limited, Toronto, Canada, and terminated my employment there on November 11, 1929, and came to St. Joseph, Missouri, preparatory to taking over the management of the St. Joseph Stock Yards Company my predecessor, Mr.

J. C. Barkley, retiring January 1, 1930, but because of the hearing in the proceeding before the Secretary of Agriculture, known as Docket No. 298, I came to St. Joseph about November 15, to familiarize myself with the matters [fol. 1732] involved in that hearing (T. 2339). Prior to coming here in 1929 I had looked over the yards several times and in 1927 was here for three weeks making an audit of respondent. As president and general manager of respondent, I am in active charge of all the operations of the company. I attended all the hearings held in St. Joseph in December, 1929, in this proceeding and at that time was familiar with conditions existing in and about the stockyards. I heard the testimony of J. O. Barkley at the previous hearing on the subject of used and useful property.

I am responsible for allocations of used and useful property which appear on Respondent's Exhibit No. 135 and also for the coloring on the maps which are attached to the appraisals of Messrs. Spratt and Quinn and which are respectively Respondent's Exhibit Nos. 132 and 134 (T. 2340). In general the position of respondent in respect to used and useful land has not changed since the prior hearing. Certain specific changes have developed, brought about either by changes in conditions or the fact that certain uses actually made of land in 1929 were not specifically mentioned.

Feedlots

I know the portion of Zone A which the Secretary allowed as used and useful and also the portion he excluded. One of those portions was the feedlot area. Since the prior hearing a change has occurred by the issuance of supplement No. 3 of the St. Joseph Stock Yards Company tariff No. 5, issued June 23, 1930, and effective July 7, 1930. The rates and charges applicable to the feedlot service were published and filed with the Secretary of Agriculture, which was contained in item No. 12 of that supplement. Effective the same date the tariff went into effect, all the [fol. 1733] leases (T. 2341) covering land leased to individual feeders were cancelled. A reissue of this tariff in supplement No. 6, effective March 24, 1931, changed the item to 12-A, but otherwise the item was not changed. Since July 7, 1930, this item of the tariff has been strictly

adhered to. The areas set forth on Respondent's Exhibit No. 135 correctly show the areas which respondent now needs to furnish feedlot services under the provisions to item 12-A of its tariff. I heard the testimony in the previous hearing as to the necessity on the part of respondent to furnish feedlot service. The situation in respect thereto has not changed. I am also a director of respondent and as president know and carry out the wishes of the directors (T. 2342). I know that the directors believe the furnishing of feedlot service is essential on the part of respondent as a part of its functions in furnishing a public livestock market. I have discussed this matter from time to time with various directors of the company. The feedlot area in Zone A was formerly used to handle receipts of cattle and calves in the southern cattle quarantine area. At that time it was intensively used. Respondent had nothing to do with the discontinuance of that use and if the Government still permitted ticky cattle to come to this market this division could still be used for that purpose (T. 2343). This is one of the instances where a facility was built for a particular purpose and dedicated to the public and put into useful service. After being intensely used for many years, through no fault of ours really, by Government regulation, this particular use was removed, and after some portion remained idle for some time, in anticipation of the possibility of having a similar use, we subsequently have put it to the best possible use that we could. I feel that once it is dedicated to public use, that it is used and useful property, and it continued to be used and useful property, even after the transporta-[fol. 1734] tion of ticky cattle was prohibited. I am of the opinion that there is a still further reason for including this property as used and useful property, in that the Stock Yards Company has been able to find another use of it meeting a pressing demand among the patrons and shippers to this market for a feeder outlet, furnishing feedlot services, thereby contributing to the welfare of the producers, the patrons of our market. The maintenance of these feedlots by respondent has contributed to the net earnings of respondent by making the market more attractive to the producers in that we have a better outlet for the thin or feeder end of the shipments from range or ranch territory, thus increasing the receipts of the Stock Yards

Company, and hence, the revenue to the Stock Yards Company from yardage and feed (T. 2344). As president I endeavor to get all the receipts I possibly can for respondent, adopting from time to time various methods of obtaining receipts. That is a part of my every-day duties. I think furnishing feedlots falls in that category. Livestock held in the various feedlots in all zones is held for the purpose of fattening and finishing for sale on the St. Joseph market. After being sold they may be either slaughtered here or shipped to other points for slaughter. The situation in respect to livestock held in these feedlots differs from livestock purchasd here and transported to country points where it is held by the owner for the following reasons: First, when held in our feedlots it is on the property of respondent and subject to its tariff charges which is not true if the livestock is taken to the country. Second, it is being held on property under the supervision (T. 2345) and control of the respondent. Third, this is a different feeding proposition from the ordinary country feeding, in that it is forced feeding and sheep and rarely held longer than [fol. 1735] 30 days for fattening while at the country points the feeding usually runs from 3 to 6 months. Because of transportation expenses, a feeder who desires to feed for only a short time can hardly afford to move livestock to any point, therefore, from the stockyards and back again for sale. This is really a transit arrangement for slaughter here or for shipment to other points for slaughter (T. 2346). Fourth, because the feedlots are physically a part of the stockyards here, they are readily accessible to local buyers and it is actually a fact that livestock is inspected, sorted into grades and purchased while on these feedlots. All the livestock so purchased is driven direct to the scales without first being yarded in the commission sales area, and after weighing, driven direct to either the packer holding pens or to the packing plant. On such sales we collect full yardage under the provisions of our tariff. Fifth, because those are physically a part of the stockyards practically all of the users of these facilities are individuals who operate on the St. Joseph market who supply an immediate outlet for small or large lots of feeders not suitable for slaughter and who in turn can put on the market on very short notice finished stock on days of light receipts, providing a satisfactory sales market

for thin stuff, and desirable average receipts for sale on the market.

The practice of railroads permitting feeding of livestock in transit on the premises of the railroads for a charge of 8½ cents is quite similar to the operation of feedlots by respondent. That practice is in vogue by railroads generally. I. C. C. Tariff No. 10,951 is a typical instance of such a practice by railroads (T. 2347).

Item 730-D of this tariff is Respondent's Exhibit No. 136 and provides in substance that for a charge of 8½ [fols. 1736-1750] cents per one hundred pounds, shipments of livestock may be stopped for not to exceed one year at certain designated points for feding and/or grazing and move at the through rate applicable from the point of origin to final destination.

The feedlots are facilities furnished in connection with the receiving, buying or selling, on a commission basis or otherwise, marketing, feeding, holding, delivering or handling of livestock in commerce. They are located at a place commonly known as the St. Joseph Stock Yards and are operated for profit as a public market. They consist of pens or other inclosures and their appurtenances in which live cattle and sheep are held or kept for shipment in commerce. The statements I have made on the subject of feedlots apply to all feedlots shown on page 1 of Respondent's Exhibit No. 135 in column 6 (T. 2350).

The next portion of Zone A which the Secretary excluded was an alley between the old Nichols and old Davis feedlots. It is now being used in connection with the feedlots and is useful in furnishing that service. What I have said in respect to feedlots would apply to this alley.

[fol. 1751] Anchor Serum Company

I heard the testimony of Mr. Barkley in connection with the Anchor Serum Company. I have the following additional reasons why the Anchor Serum Company should be included as used and useful property: This is the largest hog serum company in the world, and, in my opinion, there is some advertising value of the fact that it is located immediately adjacent to our hog yard. The chief reason, however, is the fact that I know that the Anchor Serum Company produces a substantial amount of revenue for the St. Joseph Stock Yards Company over and above the rental

which they pay. I prepared Respondent's Exhibit No. 139 which shows the details of this (T. 2380). These figures were taken from the books of the company and from information supplied by the Anchor Serum Company. Item 1 of Respondent's Exhibit No. 139, rentals, covers the rental of and land covered by the lease. For 1927 it was $380; 1928, 1929, 1930, 1931 and 1932, $428. Item No. 2 is the profit made by us on the sale of corn and other mill feeds to the Anchor Serum Company for the various years. This sale of feeds to the Anchor Serum Company is not to feed hogs in the yard, but is a direct sale to them of corn or feeds that were ground in our elevator for the Serum Company to feed hogs on their premises, and the figures shown represent purely the profit that is made on this transaction and if the lease to the Anchor Serum Company is an outside enterprise of the St. Joseph Stock Yards Company, certainly corn and other feeds sold to them for consumption on the leased premises is likewise an outside enterprise, and all such profits should be excluded from the operating income of the St. Joseph Stock Yards Company. This item totals for 1927 $335.14, 1928 $2,204.38, 1929 $2,167.34, 1930 $4,424.19, 1931 $7,207.40 and 1932 $3,768.02. [fol. 1752] Item 3-A represents the yardage earned on hogs purchased on the yards by the Anchor Serum Company at the St. Joseph market, and, in addition to the revenue that we receive from the activities of the Anchor Serum Company in purchasing hogs on that market, it is reflected in the additional competition in the buying and makes our market just that much more attractive to the producers. This item totals for 1927 $4,815.36, 1928 $4,922.88, 1929 $5,015.04, 1930 $5,114.88, 1931 $5,222.40, 1932 $5,283.84. Shippers of hogs to the St. Joseph Stock Yards are attracted by the outlet which the Anchor Serum Company supplies for a particular class of hogs at a premium. These are what they call serum hogs. The Anchor Serum Company is practically the only one at our market which is particularly interested in that class of hogs.

Item 3-B on Respondent's Exhibit No. 139 is the gain received from the sale of corn on hogs fed on the market. This feed is actually consumed in the pens of respondent. This item totals for 1927 $6,760.65, 1928 $6,695.60, 1929 $6,851.56, 1930 $6,919.69, 1931 $6,707.30 and 1932 $6,146.83. Item 3-C represents the expense incurred by respondent in

providing the service and feeds in items 3-A and 3-B. This item totals for 1927 $1,591.86, 1928 $1,586.52, 1929 $1,587.68, 1930 $1,582.41, 1931 $1,577.67, and 1932 $1,574.64.

Item 4-A is the revenue received from the use of the immunization plant by the Anchor Serum Company for each of the various years (T. 2382). Item 4-B is the expense connected with that immunization plant's service. The net revenue produced by subtracting 4-B from item 4-A is as follows: 1927 $145.04, 1928 $153.92, 1929 $144.30, 1930 $475.07, 1931 $1,636.20, and 1932 $738.00. In the last line I show the total net revenue received by respondent from [fols. 1753-1755] the activities of the Anchor Serum Company which is as follows: 1927 $6,028.97, 1928 $7,947.38, 1929 $8,055.52, 1930 $10,716.54, 1931 $14,453.23, and 1932 $9,558.21. If the land occupied by the Anchor Serum Company is excluded from the used and useful property all of these additional sources of income secured by us should be deducted. If these items were deducted if would show that respondent is getting excellent return from this tract of land. In fact it would be getting much greater than a fair return from the value of that particular tract (T. 2383). In my opinion, the fair proposition would be included the land as used and useful property. The management of the Stock Yards Company has seen fit to make the arrangement which exists with the Anchor Serum Company, and it feels, and the figures prove, that the arrangement is very profitable. The Stock Yards Company would be ahead if the property and the income were excluded, but I think the fairest way is to leave the situation as it is being managed by the officials of the Stock Yards Company. Furthermore, keeping the property in the classification of used and useful property would be helpful in case we retired that particular tract of land and desired to move the Anchor Serum Company to another tract, besides, it is more convenient and we believe more equitable to have the revenue accrue to the various departments of the yards, the same as revenues from other sources, and give them the advantage there is by arrangement with the Serum Company (T. 2384).

[fol. 1756] Zone 1

I am familiar with the use that is made of Zone 1. It is occupied by the hotel building providing meals and rooms

for the patrons of the yard. A smaller portion is occupied by a portion of the Journal Building. A portion is occupied by a private roadway, leading from Illinois Avenue to the rear of the Transit House and to the horse and mule division and a small portion of the horse and mule division lies in this zone. I heard the testimony offered at the pre-
[fol. 1757] vious hearing on the subject of the Transit House. The situation is practically the same now as at the time of the previous hearing. I heard the statement of Mr. Christensen that the patrons are chiefly commercial truckers. I investigated this statement and discovered that for the month of November, 1932, I found that 51.6 per cent of the total registrations were actual shippers, and for the month of December the percentage of actual shippers was 68.6 per cent, and for the month of January, 1933, the percentage of actual shippers was 56.6 (T. 2400). In my opinion the need for the maintenance of the Transit House by the management of respondent has continued. The Secretary allowed the Transit House as used and useful property and I believe that was proper. There has been no change in circumstances and conditions respecting the use of the Transit House since the prior hearing that would have any bearing whatsoever upon the change of classification from used and useful to non-used and useful.

Zone 2

The old horse and mule division is used for livestock feeding and fattening purposes. It is also used to house our 4-H Club Baby Beef and Pig Club Show. It is available occasionally for pure-bred and dispersal sales and also has been left in a position that it can be reverted to the use
[fol. 1758] of the horse and mule business, should that business revive sufficiently to warrant such use. What I have previously said about the feedlots would apply to the feeding service that is being rendered by respondent in Zones 1, 2, and 3. The charges for this service are covered by respondent's tariff. Referring to the question asked Mr. Christensen on page 373 of the transcript as to whether different feeders than Stevens and Williams had used the feedlot facilities in Zones 1, 2 and 3 (T. 2402), I know that there were other feeders besides Stevens and Williams that used these facilities. Those feeders paid directly to re-

spondent its published tariff charges for such facilities. That was during the year 1932.

Baby Beef and Pig Club Show

I consider this 4-H Club Show to be essential to the proper operation of respondent's stockyards. Livestock [fol. 1759] shows are considered a proper function and good business on the part of the Stock Yards Company in increasing the production of the right classes of livestock, giving encouragement to boys and girls and junior farmers to produce economical livestock, and, at the same time, familiarize themselves with the operations of the stockyards and the facilities for the disposal of their products. The Stock Yards Company benefits in that the production of better-grade livestock is more profitable, and encouragement of profitable production by the producer will react to our benefit, and also from the fact that he has become acquainted with our market, we feel that it is a good thing, in that when he has the livestock to market he will use our facilities. Practically all of the major stockyards maintain similar shows. A great many of them maintain elaborate facilities or show buildings exclusively for these shows. Compared to such facilities, our facilities are modest (T. 2405). If we did not have these facilities in the old horse and mule division, we would not have any place where a livestock show of this type could be held. We would either have to abandon the show or provide a building to handle it. Based upon my knowledge of the effect of these shows, in my opinion it would be advisable for the Stock Yards Company to provide a building under those circumstances, which would include some land. If such a building were provided, I would use my best efforts to keep it occupied during the other seasons. That is what I am actually doing in the horse and mule division at the present time. The Secretary of Agriculture supervises the 4-H Club Show through the Extension Division. It is also supervised by the State Colleges of Missouri, Kansas, Iowa, and Nebraska (T. 2406). I heard Mr. Black's statement as to the area and the buildings used in connection with the 4-H Club Show. He correctly stated the area and buildings. Three [fols. 1760-1766] to four hundred boys and girls come here annual-y for this show (T. 2407). As many as can get in

stay at the Transit House. We have a dinner for the boys and girls on the second night of the show at the Transit House. We charge these boys and girls yardage for the animals that are brought to the show at the regular published rate for the species. The animals are fed while here and respondent provides the feed, charging for it at its regular published rates. This yardage is performed and this feed fed in the facilities which were specifically stated by Mr. Black as being used in connection with this show. The animals are yarded in the buildings and fed in the space that is allotted to them (T. 2408). The open area is used in connection with going to and from these buildings and moving the animals. We also do some of the judging outside when the weather is fine, otherwise it is done inside. It is my understanding that the revenue by way of yardage and feed profit is included by Mr. Bachmann in Government Exhibit No. 124, page 2, as income, which he recommended be allowed to respondent in its gross operating income. The same situation is also true with respect to the figures he read into the record on page 1332 of the transcript for the year 1932.

[fol. 1767] Income for Rate-Making Purposes

Probable Future Receipts

I am familiar with the trend of receipts for the past six years. It has been downward in practically every instance, as indicated in our yearbook which is an exhibit in this proceeding. For the first month and a half of 1933 the receipts have fallen off from 1932 (T. 2423). Respondent has encountered additional competition since 1929. There has been more of a tendency for packers to buy hogs direct at country points, rather than at St. Joseph and other public markets. There has also been an increased tendency to buy stocker and feeder cattle and calves at intermediate country points, rather than at St. Joseph and other public markets. There has also been a tendency to buy this class of livestock direct at the ranches for shipment to feedlots without passing through public markets. I do not believe that this can be blamed on the depression because there [fols. 1768–1779] were substantial evidences of this tendency or these tendencies before the depression was felt. Based upon my experience and the facts to which I have

referred, I do not think we can reasonably anticipate an increase in receipts in 1933 over 1932. I think we will do well if 1933 receipts equal 1932. I do not believe an average of the receipts of 1927 to 1932, inclusive, would be fairly indicative of what we may expect in the next few years (T. 2424). In my opinion an average of the gross and net income of respondent for the years 1927 to 1932, inclusive, would not be a fair basis upon which to estimate respondent's net income for the next few years. I think I have already stated that we cannot reasonably anticipate an increase in receipts. In addition, there have been certain changes which we believe will have a permanent effect upon our net income, which will be stated by Mr. O'Malley in his testimony (T. 2425).

[fol. 1780] Cross-examination:

Traders and Speculators

Referring to Respondent's Exhibit No. 138, item No. 1, which is entitled "Yardage including the privilege of the market," and the statement: "Livestock resold in commission division, one-half the rail yardage rates additional will be collected," the one-half (T. 2445) yardage charge is imposed on all livestock sold in the stockyards when the actual sale is made to another buyer in the yards, except when it is bought to go to the country to feed. If a dealer or trader has purchased livestock in the yard, and resells it in the yard to another dealer or trader or to a packer or an order buyer or a commission firm, the dealer or trader who sells the livestock is required to pay a yardage charge regardless of whether the resale takes place in the commission division or the traders division. If livestock [fol. 1781] is sold in the commission division, that would be the first sale and we would collect full yardage like we do on all sales (T. 2446). If the trader "plants" some feeders in the commission man's pens who, acting for the trader, sells them to a country feeder, my understanding is that the Stock Yards Company would not collect yardage on that sale. The destination to the country for feeding relieves the sale of this re-yardage, no matter how it is sold to the country. I might amplify that by adding in supplement, that, of course, our idea in not charging the country shipment is to benefit the buyer that is going to feed it,

because we feel if the trader is going to have to pay half yardage, he would add that much to the sale price to the country buyer and it makes just that much more handicap to him in bringing them back to the market and reselling them (T. 2447).

Used and Useful Property

Feedlots

Referring to Respondent's Exhibit No. 138, Item No. 12 entitled "Feedlots and sheds," which item sets out the schedule of charges for the use of the feedlots, the charges there cover the entire feeding period. In the case of sheep that approximates 30 days. Hogs would run longer than that. I would estimate they would average probably 50 days. That is more or less of a guess. The same is true of cattle. Some of the cattle they just warm up, and don't keep very long; others they feed 50 to 100 days, so probably the average would be 50 to 60 days (T. 2448). I would not say that we had made a study to ascertain whether or not these charges return to respondent a fair return on the value of the property used in this feeding, after deducting all proper expenses (T. 2449). Without such a study I could not state definitely whether the charges [fol. 1782] actually do return respondent such a fair return. Off-hand, I would say they did not.

The old southern cattle division could be used right now if the shipment of ticky cattle in interstate commerce were again permitted. It would require some work in the way of running fences, putting in some water troughs that have been taken out, and chute pens would have to be rebuilt. For the purpose that we are now using the pens it was not desirable to keep them separate and we took out the gates first and then some of the fences in between, rather than repairing them and fixing them up. The deadline has been built over in places. There are some places where the deadline might be diverted to go some place else. It is not now intact. There would have to be some changes to make it work (T. 2450). In some places we would again have to make the deadline a vacant property. Maybe we could use an alley which is already vacant. If that was so, we could not then use it as an alley. I would not say that we anticipate the return of ticky cattle to the stockyards.

It is a possibility, but not probable. It is my understanding that ticky cattle ceased coming to St. Joseph because of an order of the Bureau of Animal Industry. I do not know the extent to which the receipts of ticky cattle had decreased at St. Joseph before that order was put into effect. As I understand it, I do not believe that the shipment of ticky cattle to St. Joseph had become a negligible quantity prior to the putting out of the order. It was some regulation about moving ticky cattle across Oklahoma that decreased it some toward the end, rather than the actual prohibition of the interstate movement of those cattle (T. 2451). I do not know whether the Oklahoma order was made by the State of Oklahoma or the Federal Government.

I think I made the statement that it was more economical [fol. 1783] for feeders to use the feedlots than it would be to take the animals away from respondent's property and feed them in other feedlots or yards owned by the feeders. By using respondent's feedlots the outbound movement expense and the inbound movement expense is saved, that is, the truck or freight charges. If someone were to acquire what is called the Fowler Estate to use for feedlot purposes, it would necessitate driving and a resultant shrink that they don't have just coming in from the feedlots right into the yards, where there would be practically no shrink. The driving of sheep, if it is only a mile, would result in quite a shrink (T. 2452). Coming in from the Fowler Estate might be about a mile by the time the sheep come around by the roads.

As to the number of sheep purchased at St. Joseph for feeding in the feedlots, I do not have any available figures and do not know how many it would be. The years vary considerably. In a ~~year like~~ 1932, I would say that it would be somewhere between 50,000 and 100,000, or it might be a little over 100,000. As to cattle, we know that all the cattle are bought at the St. Joseph market that are fed in this vicinity. I do not have the figures, but I presume they are easily available (T. 2453). All the hogs that are fed in the hog feeding facilities are bought in the St. Joseph Stock Yards. Some of them may be bred, and a few of them may have kept some sows and fed out the pigs. There were more hogs last year than for some years. Rockhold fed quite a few, but I don't know the numbers. Not all the sheep fed in the feedlots are bought in the stockyards.

As far as cattle and hogs are concerned, they are all bought in the yards. Sometimes when there are not a sufficient number of feeders on the market, they ship in a few feeder sheep.

Referring to the Fowler Estate, if they were to drive [fol. 1784] from that location they would have to come up to Lake Road down at the point where it joins what they call Diagonal Avenue, west and south of Armour & Company, follow Lake Road up to the St. Joseph Tannery Company and down around in behind the sheep house, and I fully believe that is a mile distance, possibly longer than that (T. 2454). I know it is two miles to a point which is slightly farther down Lake Road to our Exchange Building. There would be no way at the present time to get from the south end of Packers Avenue to Lake Road. It would be necessary to cross the St. Joseph Belt Railway, the Union Terminal Railway and the Missouri Pacific Railroad lines, and over property not owned by us. I would not regard it as practicable to provide such a drive when facilities are available a good deal closer and much more advantageous to the feeder. I have not made any investigation to determine what it would cost feeders to truck their livestock out to their own feedlots, which might be located on property other than respondent's (T. 2455).

I have read the testimony of Mr. J. O. Barkley, as it appears in the abstract of record of the last hearing. As to whether I agree with his testimony, I don't see anything on pages 241 and 242 that I particularly disagree with. The part that refers to feedlots being under lease, of course, is no longer true. There are no leases on these properties; it is worked under our tariff, under item 12-A, on a per head basis. I think some of the reasons for including the feedlot are apparent, in the five reasons that I gave, and adding to the point that Mr. Barkley has put in here as the reasons for using it. I have had the experience during the last three years added to the experience he had up to that time. I read the reasons which I gave into the record, and I think there are some there which Mr. Barkley did not give. The [fol. 1785] similarity to this operation and the (T. 2456) feeding at railroad points, the fact that it is physically a part of the yards, and the individuals who operate them operate on the yards,—I don't think he developed that point particularly,—are able to be on the market and in close

touch with the market, and, at the same time, carry on their business as a feeder in the adjacent feedlot, and, by reason of the proximity of the feedlots, put them on the market in almost an hour's notice which you could not do if you had to go and get trucks to get them here, and amplifying what we said a short time ago, not only the trucking expense, the sheep are hard to load and unload, and you get a shrink on the truck sheep that you would not have on the sheep if you drove them across the road into the yards and onto the scales, a fact that I do not think that Mr. Barkley developed to the extent that I have, and the fact that these sheep are actually bought on these feedlots, that the sorting is done over here and the buyer goes over there and agrees on the price. He also brought out the fact that the difference between this and the ordinary feeding is that it is what we call a forced feeding. They do not have the range to move around. They keep them more or less confined and feed them heavily, in order that they take on this fat rapidly. Mr. Barkley spoke several times about this land for expansion. We feel that, inasmuch as most of it had been used previously for stockyards purposes and dedicated to that purpose and is now being continued to be used for what we consider a useful stockyards purpose in providing an outlet for thin lambs and bringing fat lambs back onto the market, that, while it would be available for expansion, we do not (T. 2457) consider it as expansion land particularly. The land occupied by these feedlots is available for expansion, but inasmuch as it is being used, it is not necessary to [fol. 1786] consider it as expansion land. Inasmuch as we have other land for expansion, if we are going to be allowed land for expansion, which we think we should be, it is not necessary to develop these feedlots and the use they are being put, to call that expansion land. Mr. Barkley went apparently to some extent to develop what use could be put to Zone N, which I have not particularly developed at this time, in that it could be used for feedlot purposes. I do not think we are particularly claiming that land for feedlot purposes at this time. I think outside of that, as far as reading it hurriedly, I do not notice any other point. As to the similarity between these feedlots and the feed yards maintained by the railroads, these feedlots that are maintained by the railroads are yards at convenient points enroute from the ranch or the range to the killer, to finish fattening. And

they stop them there and they have the privilege of doing that and feeding them and going on at the same rate except 8½ cents per hundredweight charged for that privilege. Exactly the same (T. 2458) thing happens to us. The lambs come in en route to the killer, and they are unloaded as thin lambs, put in these pens for fattening, the privilege for which we charge 5 cents a head, and they are brought out and sold to the killer to kill. The same thing applies to cattle, of course, being on a hundredweight basis, the railroad rate compares with some of the charges we make (T. 2459). In rare occasions, hogs are fed simply as hogs. These are corn fed cattle and the hogs follow the cattle. That is primarily the reason that the hogs are in the feedlots, and there is some difference between sheep and cattle, but on the whole the reasons are practically the same for both. When I state that the feedlots are physically a part of the stockyards in reference to the feedlots on Zones 2 and 3, I do not think we ever considered that the horse department was not physically a part of the stockyards. It [fol. 1787] was built over there because that location at that time was desirable. It is still part of our facilities. I still regard that location as available for a horse barn, but at the present time it is used throughout the year by feeders. It has always been a part of the stockyards. The O'Connell feedlot on Zone B is also located on our land directly, yes, sir, that is being used as a stockyard. That is, for what Mr. Christensen called the stockyards. We still feel it is part of our yard. It is all within the Belt loop where all the marketing facilities outside of the horse barn takes place (T. 2460). The Rockhold feedlot on Zone C is about as close as you could get to the sheep house for those facilities and as primarily all sheep are fed there, I would say that is physically a part of the stockyards. The general idea in feeding sheep is that the more sheep can run around and exercise the less feed they will take on. I don't think my argument was that it would not be provided anywhere except that it is provided here. It is used here, because it is a forced feeding proposition. It may cost more money to put this fat on feeders, but they will do it in a shorter time and they can turn that over much faster. Cattle and hogs are not restrained to the same extent that the sheep are in these feedlots. Cattle are not prone to become

excited and move fast like sheep, as sheep are more excitable than cattle (T. 2461).

The Stock Yards Company rarely, almost never, I would say, supplies the feed consumed by the livestock in the feedlots. There are certain individuals and corporations who make a business of feeding in these feedlots. They do not monopolize the particular space assigned to them. There were several feeders who occupied the old horse barns during the past year. This was because the facilities in other places were filled and they came over there and used the [fol. 1788] facilities (T. 2462). During certain seasons the public generally brings sheep into these feedlots to feed. It is just a little confusing to say how many operators all told there are in the course of a year, because the operator occasionally feeds commercially for other people, and outside of the feeders that have been discussed a number of times, men come up here, particularly from New Mexico and Texas, with thin lambs which are fed mostly on a per ton basis by some of the feeding companies already established. When a feeder comes to market he has the option of selling his lambs as thin lambs or as feeders, or of taking them to one of the commercial feeders who fatten them out and sell them as fat lambs. In that event yardage is paid to the respondent, and as to who absorbs the charge depends a little on how long the lambs are fed (T. 2463). If a man, say from Texas, brings in lambs and makes a contract with Stevens and Williams to feed them, respondent would bill Stevens and Williams for the yardage charge. If the Texas man arrived at the yards with lambs to feed and none of the regular feeders would undertake the job of feeding for him, respondent would provide him with facilities in which to do his feeding. That would depend, of course, on having of facilities available. In our tariff we agree to supply the feeding facilities as far as they go. If we were filled up, we could not furnish them. By that I mean, if Stevens and Williams even over in their location had room, we would retain the privilege of putting the man in there. I might say, in getting back to a previous question of yours, you asked me who would pay the yardage, and I said likely Stevens and Williams. Primarily that is because all commission firms are under bond to us, and we would not want to be in position of having to look for the yardage to some fellow whom we (T. 2464) did not know very well, or who probably was

[fol. 1789] not financially good when we have a man that is on the other end of the contract that is under bond to us and he would pay the charge.

If a shipper brings sheep to the market and does not engage the services of the commission men, the stockyards would bill the shipper direct for the charges, but would not turn the livestock over to the packer until the charges were paid. It would not run any risk, because it had the livestock itself for security, and that is also true with respect to the feedlots. In the feedlots we would have to wait longer for our money (T. 2465). There may be some instances in which the Stock Yards Company supplied the feed for the animals in the feedlots, but I don't remember any offhand, and I don't know whether they would be charged regular scheduled rates or a special rate would be made.

If a man from Texas brought sheep up to be fed, they would first be unloaded at the regular unloading docks in Zone A and he would be charged yardage on those sheep the same as any other livestock unloaded in that zone. The sheep would be driven to the feedlot by the commission man or the feeder (T. 2466). The sheep would come down the east alley of the yard to a point about opposite the stockyards' office and then go across the railroad tracks along Illinois Avenue, assuming that they were going to the horse and mule division. After the sheep had been fed, the owner or his commission man would take buyers over to the feedlots and show them the sheep which were for sale. Of course, there is the option of taking them back to the commission pens for sale, but the fact is the sheep would not all get fat at one time and the owner would not take them all over to the yards at the same time, therefore, he would have the packer buyers inspect them at the feed yards, sort out [fol. 1790] the fat ones and leave the balance to finish feeding. The feeder or the commission man would drive them back to the stockyards' scales where they would be weighed to the purchaser (T. 2467). I might add to that, there are times when the packers help them, particularly on a morning if they were short and needed the stock very badly, I have seen the packer buyers assisting in getting them to the scales in order to expedite the handling so they can get them to kill. I think Swift is the only packer which feeds sheep in the feedlots. None of the packers feed cattle or hogs.

Swift and Company used a part of the barn immediately west of the south end of the sheep house until along in December, I think it was. Now they are using a part of the Rockhold facilities on Zone C. At one time during the past year Swift did some feeding in the old horse and mule division (T. 2468). Stevens and Williams, Rockhold Feeding Company, Swift and Company and Sinclair Feeding Company were all feeding there at the same time. But, ordinarily, they do not use that facility for their own feeding, except there are times when the other feeders feed for Swift on a per ton basis. In addition to Swift's own feeding lots, sometimes they have a contract with the feeder to feed some for them, as well. The lambs fed by Swift and Company comprised both thin lambs bought by Swift on the stockyards and also thin lambs bought elsewhere and shipped in. Primarily, Swift feeds to take care of the thin lambs purchased on the market, but there are times or seasons when the lambs come fat, when they are not getting as high a percentage of feeders, and in order to keep the facilities running evenly, they sometimes ship thin lambs from outside, too. The initial yardage charge on the thin lambs purchased by Swift and Company in the stockyards is paid by the person shipping them to St. Joseph. Then Swift & Com- [fol. 1791] pany drives the lambs to the feedlots (T. 2469) and Swift pays the feedlot charges that are scheduled. When the lambs are ready for slaughter Swift takes them back to the stockyards and has them weighed. Everything that the packing house uses is weighed alive and then the value is assessed on the killing weight, as compared to the live weight and the cost dead compared to the cost alive. Swift and Company pays the Stock Yards Company the regular yardage charges when they bring the lambs through the stockyards and have them weighed. The lambs brought by Swift and Company to St. Joseph for feeding are unloaded in the regular sales division (T. 2470), and Swift and Company pays the initial yardage charge on those so that two yardage charges, in addition to the feed charges, are collected on all sheep weighed by Swift and Company. I have found that is true from complaints made by Swift and Company on account of having to pay two yardage charges.

I noticed the testimony given by Mr. Barkley on cross-examination with respect to an illustration of the feeding

of sheep on a farm somewhere out in Buchanan County owned by the Stock Yards Company. I do not exactly agree with what Mr. Barkley said about that. With respect to a farm which the respondent might operate 4 or 5 miles out in Buchanan County and on which it permitted the feeding of sheep, identically in the same way physically, and for which it made the same charges as are made with respect to the feedlots, some of the reasons which I stated why the feedlots should be considered used and useful would not apply to that farm. As to the distinction I see between the farm and the nearby feedlots, the fact that the feedlots are nearby and the fact that they are adjacent and we consider it physically part of our yards is a big item. They are under our control. The fact that the feeder, himself, can stay on [fol. 1792] the market and look after his business at the feedlot which is immediately adjacent and go over and select lambs to be put on that particular market without that trucking or loading or shrinkage, makes a difference. It probably would not be quite as easy to get the packer buyers and other buyers to come out to the farm and negotiate for the sale of sheep as it would be to the feedlots. That is one reason why we included them. Actual sales are taking place there, they are inspected and graded and sold right on these premises. You could not expect the packer to go out in the country when buying; in fact, if the packer did that, we would be getting away from the stockyards. Of course, they might be shipping to other points (T. 2472). To a limited extent buyers do go quite a distance out to feed yards to buy. I am acquainted with the situation at Kansas City at the Morris and Prospect yards. That is a situation that we hope we are going to get stopped pretty quick. On my direct examination I stated that these feedlots were facilities commonly known as stockyards conducted or operated for compensation or profit as a public market and consisted of pens and other enclosures and their appurtenances in which live cattle, sheep and swine are received, held and kept for sale or shipment in commerce. I would say that the O'Connell feedlot in and of itself is commonly known as a stockyards (T. 2473). It is a yard to hold stock, and to make the term more descriptive I would say it would be a feed stockyards. I might call a farmer's feedlot a stockyard, but he probably would not bring anybody in there to buy, as is done presumably on a market. In its physical

aspects there is not a great deal of difference between the O'Connell feedlot and the farmer's feedlot. The O'Connell feedlot is better developed than lots of feed yards would be. On the other hand, I presume there are lots of farmers' feedlots that are well developed (T. 2474).

[fols. 1793-1807] The difference between a public market and a private market is the difference between the words "public" and "private" (T. 2475). It is my thought that when Stevens and Williams are feeding sheep in one of these horse barns, for instance, and selling them to packers, it is operated as a public market.. Assuming that Stevens and Williams were obtaining their livestock direct from the railroads and that no stockyards exist on Zone A and were feeding it in those barns and selling it to the packers, if more than one packer was going over there and buying stuff, I guess that could be classified as a market. I made no distinction between the sheep feedlots and the cattle feedlots in so far as being a public market is concerned. I regard them both as public markets.

[fol. 1808] I don't know as I can say exactly how we arrived at the scheduled rates for feeding livestock in the feedlots. We figured that that was about the basis that a charge like that ought to be made, and we also figured it would return to us as much or more than we used to get when we rented the facilities. I imagine that recently this rate has not brought in a return which is quite as much as it was under the leases. There are times, of course, when it amounts to more. It depends wholly upon the volume of livestock being fed.

Anchor Serum Company

The purpose of Respondent's Exhibit No. 139 is in connection with respondent's view that that part of Zone B occupied by the Anchor Serum Company should go into the rate base as used and useful property. The exhibit is to show that the use of that property by the Anchor Serum Company returns a compensatory net revenue to the stockyards (T. 2515). The last line on the exhibit entitled "Total Net Revenue," is intended to show that in each of the respective years that amount was realized over and above all operating costs. I have not made a computation to ascertain the percentage of return that represents of the fair value of the property, except that in our mind

we figured it would make a return in excess of what we considered a fair return. To start with, we figured the land used by the Anchor Serum Company, and not the leased land. As pointed out in my direct testimony and starting, for discussion, with the rate base, we would start on the basis of 7½ to 8 per cent suggested by the Secretary [fol. 1809] in the last hearing. This yields roughly 7½ per cent. It runs up and down.

The item numbered 1, that is, the first line, represents in each year the total rental paid in money by the Anchor Serum Company to the Stock Yards Company (T. 2516). Item 2, where the feed gain is shown, represents the feed sold directly to the Anchor Serum Company by respondent. That is the difference between the actual cost, including our expenses in connection with the handling of it and the actual money received from the Anchor Serum Company. It is what I would call the net gain on feed. The expenses incurred in connection with the handling of feed includes the labor, some machinery, depreciation on machinery, light, power, fire and explosion insurance, repairs, labor, and depreciation. In some instances the respondent merely grinds the feed for the Anchor Serum Company and charges them for the grinding expense. In other instances we buy it and charge them with the cost of it and in addition the grinding expense (T. 2517). The employees of the respondent who handle the feed do other work. This is almost a one-man plant. One man had always been there before we had this arrangement, and he still operates the plant himself, but we are able to get more with the arrangement we have had for grinding feed for Anchor Serum Company with no additional labor, although we charge labor against this operation. I refer to the feed grinding plant which we started in 1930. The corn handled in this plant never reaches the yard. It is handled in the elevator and from the elevator to the Anchor trucks. As to how we allocate the proportion of stockyards labor engaged in handling this particular corn, we must have charged the whole man's time down there to it (T. 2518). Our accountant made a test of the approximate time that he was using on the Anchor feed and put in a charge for it, and I [fol. 1810] think the figure was pretty near all his time. It is very rarely that we are rushed enough so that we have to maintain more than one man, and prior to this contract

we had one man there all the time. Up until this last year the corn came in by rail and was unloaded directly from the car into the elevator. Since then we have been buying truck corn and the trucker shovels it into the hopper of our elevator. This one man takes it out of the elevator and delivers it to the Anchor Serum Company. We did not distribute to this corn and milled feed any part of the salaries of management and office people. As far as expenses is concerned, we always had the expense of the elevator and a man has been there all the time. This is really gravy, as I would describe it to get an additional revenue. We would have the expense anyhow. We have been charging it, and it is sufficient for respondent, so that a normal charge could be made for it. It is not our theory that we maintain the elevator to supply corn to the stockyards and that any other corn that we can sell out of it is just that much profit. The theory is that the elevator has been there, was built, was operated, the same as it is now, that the one man supplied the feed at that time, and we have been able to find a remunerative outlet for some additional feed at a profit. That is one of the reasons that in setting up here that this part of Zone B should be included in used and useful, is that it is a profitable venture tied up to other stockyard operations. As to whether a charge of some part of the general overheads of the company should be made against the revenues derived, I did not think, in strict interpretation of the term, that you would not have to do that. You could do that and it still would be profitable, and we had it before in any case; this is one of the places that we pointed back to the Exchange Building, where it does not prove unprofitable to the [fol. 1811] shipper. This place, I believe, is a profitable venture at about the ordinary expense that we would have in supplying corn, which accrues to the shippers' benefit, including all our earnings from stockyard operation. If this service was maintained for the Anchor Serum Company alone, in ordinary years, I am sure it would be profitable (T. 2520). Item 3-A is the yardage paid in the respective years by the Anchor Serum Company to the respondent. That is mostly on hogs purchased by the Anchor Serum Company in the stockyards. This yardage is not paid by the Anchor Serum Company. I thought I made that clear in my direct testimony, the outlet that it gives for this

certain class of hogs is that we could not sell the serum hogs to anyone else but the Anchor Serum Company, that it accrues to us by reason of that company being on the market and able to purchase. They do not pay a yardage, it comes to us in the regular yardage channel. A serum hog is a hog that has been treated with serum. The Anchor Serum Company puts these hogs on feed. They feed only hogs that have been treated (T. 2521) and for them they pay a premium over the regular market on that account. The hogs have been treated before they are shipped in. The owner may have had that view in mind when he treats them. I don't know how they handle them. They are handled by certificates so that the Anchor knows they have been treated. The Anchor Serum Company goes further than purchasing all treated hogs that come to the St. Joseph Stock Yards. I think they are even out looking for them away from us. I presume this treatment is the ordinary inoculation of hogs that is done at the stockyards, but inoculating them in the yards would not do. They have to be treated some time prior to coming to the market in order to be in feeding condition (T. 2522). If a firm should buy some hogs at Kansas City and have them inoculated over [fol. 1812] there and keep them a certain length of time and ship them to St. Joseph, I presume they would be the kind of treated hogs I have been speaking about. I don't know what the regulations are. There may be some time between that inoculation and when they could sell them as tested. Anyone will purchase these treated hogs, but the Serum Company pays a premium, and that is why the commission men like to sell them. The amount of $5,283.84 stated under Item 3-A represents yardage paid by the respective shippers on hogs which were bought on respondent's yards by the Anchor Serum Company and on hogs that the Anchor Serum Company shipped in to us from other points on which they would pay yardage (T. 2523). This amount represents the gross revenue from yardage on those hogs.

In Item 3-C we have estimated the actual operating expense, without overhead, which covers that item, and also the 3-B item. The 3-B item, corn profit, differs from Item 2 in that Item 2 is corn taken out of our elevator by the Anchor Serum Company and fed on its own premises. Item 3-B is corn fed on the stockyard premises. That includes corn paid for by the original shipper and by the

Anchor Serum Company on some hogs fed in the yards (T. 2524). Item 3-B represents the difference between the actual cost of the corn and what we sold it for, what we call spread. Then, under Item 3-C is listed the operating expenses which we charge against the income Items 3-A and 3-B. The labor referred to under 3-C includes the loading and unloading, yarding, feeding, watering, handling, and caring for hogs in the sales division. That is figured on a time basis of what it takes to handle a given number of hogs. We knew the number of hogs in this case, so we allocated the labor applicable to this particular number of hogs. We took a percentage of the time of individual [fol. 1813] men that worked handling hogs (T. 2525). We have a basis of their salary, the time they spent in handling hogs and extend their salary over a period of time. For the same period of time we know the total number of hogs we handled, so we could figure proportionately what the labor is per hog. The labor is mostly yardmen. That includes unloading men, dock men, handlers, feeders, scalers, and everybody in connection with it. We figured the proportionate time these men worked on hogs. Mr. Black assisted in the preparation of this, knowing the time that each of these men put in on definite jobs. I don't think he attempted to split minutes when he knows the percentage of time because each of them have regular jobs and they go from this to that job. Some of these men have 100 per cent time in the hog house (T. 2526). It would be an estimate. Mr. Black keeps a record every day of what each man does with his time. I don't know whether he splits it out for each hour, but he could tell in a week approximately what a man would spend on each job. I think it is a pretty close estimate. There is some point that the foreman who corresponds to a night superintendent would have to have his time allocated between hogs, cattle and sheep. In this case, we charge ⅓ of his time to hogs. I do not think that Mr. Black keeps a record showing the proportion of each man's day spent working on each of the different species. I think his knowledge would allow him to allocate the time which he has done in this case. I would not think it would be necessary for him to allocate (T. 2527) from memory the time that a man spent in a year for hogs. His knowledge day by day of what each man does would give him an estimate without carrying it over the year, I imagine,

because outside of high or low periods his knowledge of this man's operations would be practically the same every [fol. 1814] day. An estimate was not made for each of the years. The same figure was used for each year. The estimate was made up based on 1932 and the same proportion of time was used for each of the six years (T. 2528). To get the amount of time per hog, I think we took an average week as to labor and an average week as to receipts of hogs in the statement and divided the time of that week devoted to hogs by the number of hogs handled in that week. I do not know whether it is averaged for a particular week or averaged for the whole period. Mr. Black prepared this statement for me. For all practical purposes it is as good an approximate basis as we could figure. I would not go so far as to say that I see no objection to the Secretary of Agriculture using such a basis in this case if he desires to allocate yard labor to the various functions. The exhibit is put into show the excessive earning that we feel that accrues through our earnings to the shipper for this facility, for the facility used by the Anchor, or at least, the figure used by the Anchor in this Zone B, (T. 2529) and I believe the exhibit is accurate enough to answer that purpose. It is the best we could make with the material. If the Secretary desired to allocate labor to functions for an exhibit of this kind, I would say the basis was accurate enough. If the number of head varies in the respective years, that would affect the accuracy of my method of allocation to some extent, but we have used the same figure for each year.

Casualty insurance premiums are easy to figure as it is a rate on labor paid, so all we need to take is the rate for that particular year and figure out the amount charged to labor to make a casualty insurance item (T. 2530). The number of hogs purchased by the Anchor Serum Company were approximately the same each year. They budget their purchases and shoot at a figure each year for each [fol. 1815] kind of hog. The variation in the amount of casualty insurance premiums in the different years is due to variation in the rate. We obtained from the Anchor Serum Company the total number of carloads purchased, and in making the charge for water, allocated according to the ratio which their purchases bear to our total receipts (T. 2531). We do not have any way of telling how much

water is used in the hog house or the sheep house or the cattle yard. We took our purchases of water for the month of September and applied the proportion that the Anchor Serum Company purchases of hogs bears to our total receipts of livestock. In that way we arrived at $183.92 (T. 2532), and that figure was used for each of the years prior to that year. Allocation of light was obtained in the same way. We obtained the total income from yardage and corn profit for 1932, as shown in Item 3-A and 3-B, amounting to $6,146.83, and deducted from that $1,574.64, which represented, in our opinion, the operating costs connected with that yardage and corn profit, and arrived at $4,572.19 as the profit of respondent from yardage and corn profit resulting from the Anchor Serum Company having provided that additional outlet. Our theory is that without that outlet that number of hogs would neither have been shipped or sold in our stockyards. We assume that the more outlet we get for hogs (T. 2533) the more receipts we will get, and this particular outlet taking care of a particular variety of hogs for which a premium was paid, produces an additional outlet we ordinarily would not have. That part of Respondent's Exhibit No. 139 covered by yardage and corn profit is based on the assumption that if the Anchor Serum Company were not operating here and supplying the additional outlet, our receipts of hogs would be less by the amount that the Anchor Serum Company purchased. This [fol. 1816] additional outlet we believe is the reason for getting the hogs in the first place (T. 2534).

The immunization plant service listed in Respondent's Exhibit No. 139 is the service of the immunization plant maintained by respondent. We have a regular fee for doing the work of immunizing, which is charged against the hogs. The item of $185 in each of the years would represent the number of hogs multiplied by the regular fee per hog. The same is true of vaccination where that item appears. I would not say exactly that the $185 was calculated for one year and then applied to each of the other years. I think I stated that on these hogs they have a budgeted number of each kind of hogs that they adhere to each year as closely as possible. They gave it to us, and this is the figure applied to that number of hogs for the years shown across the sheet. That is not true of the vaccination figures. We had the actual figures since the

start of that on our own books and that applies to exactly the figures that they paid us for (T. 2535). The number of hogs used by the Anchor Serum Company vary slightly during the different years. As a basis for calculating $185, we took the Anchor Serum Company's budget. That just applies to spraying and vaccination, and they used to do some of that themselves. Since 1931 we have been doing most of it and we get the actual figures on it. It is my opinion that if the Anchor Serum plant in Zone B be excluded from the rate base, it would affect the ability of the respondent in case it should so desire to move the Anchor Serum Company to another location and use that land for extension of respondent's pen areas (T. 2536). The matter is more practical than would be considered an argument, because we are constantly working with the Anchor Serum Company in an endeavor to have our relationships friendly and I think it is evidenced in this report that we [fol. 1817] have been able to profit by that pleasant relationship. We believe if this land was considered used and useful and we had that point to use in moving the Anchor Serum, which we may have to some day, it would be a great assistance to us in maintaining that pleasant relationship and profiting thereby, as we have been able to do in the past. Some of the buildings erected by the Anchor Serum Company are substantial and expensive in construction. I would not say that that would negative any immediate prospects of moving them. That is a risk that they take. They have no more understanding with us now than they had before they built the building (T. 2537). I think always the desire would be not to move them unless it was a necessity, but if it was a necessity, we could not let something like that stand in our way, and that would be one of the reasons that we would need or would like to have this argument that would assist us in doing that amicably and not have any destruction of the friendly relations we have with them now. I think I stated in my direct testimony that the statement by the Secretary in his order that this land is used and useful would give us an argument with the Anchor Serum Company if we should want to move them and they did not want to move, and we produced this exhibit to show that the Secretary could do that because we feel the land under the existing conditions is giving a fair return and it is available land and is really used and useful, in that it is returning to us a good, fair return.

I would not say that one could make up an exhibit exactly similar to Respondent's Exhibit No. 139, omitting the same costs that 139 omits and on that basis prove that respondent's cattle rates are returning a very high rate of return. I would not think so (T. 2538). The cattle rates and the hog rates and the sheep rates and all other sources of revenue we have, go to make the return that the Stock Yards [fols. 1818-1827] Company as such makes, and that you could not separate any part of that, reasonably separate it and say that it made a return, because one attracts the other and they are so interwoven that you could not separate them. This is an item that we feel can be, and inasmuch as the Secretary excluded it last time, that this can be shown to be returning to the company from excluded land a profit, and as we are willing and would like to have it included because we feel it does connect with our business, that is the reason for putting it in, that it either should be included or these items of revenue should be excluded. I don't think it would be fair and just for the Secretary of Agriculture if he took the cattle, hog, and sheep rates all together, to test the reasonableness of respondent's rates on a cost study exactly similar to the one I have prepared in Respondent's Exhibit No. 139. There are expenses that do accrue to those operations that probably have not been touched in here. We mentioned that as far as overheads and other things are concerned (T. 2539) but the exhibit we believe is accurate enough, indicative enough to show what we intended to show, that, by reason of the extension we have made of the revenue on a reasonable value for the land, it shows so high that we could still include lots of expenses that have not been included in this exhibit and make a fair return. As to whether it could be shown by any exhibit made on the same basis as Respondent's Exhibit No. 139 that any purchaser at the stockyards is rendering a large return to the stockyards as, for instance, the two packers, aside from any exhibit, I certainly am not one to discount the advantages of the packers to this market.

[fol. 1828] Transit House

I think respondent is obtaining for the Transit House all the rent that it can. There is an understanding between respondent and the operators of the Transit House provid-

ing that respondent will have the right to inspect the operator's books, and whenever business is such that the operator can pay more rent, the rent can be raised. That situation still obtains. The patronage, particularly as it applies to the patrons of the dining room, is not sufficient to warrant an increase in the rent. The entire income to the operator has not been such as I felt warranted increasing the rent. As to whether the rent now being received anywhere near pays the respondent the cost of maintaining the building, that depends on what you call maintenance (T. 2560). I do not think we spent that much in maintenance or anything of that sort, but taxes and depreciation and other items would more than eat up the rent (T. 2561), which is $1,200 a year. That would more than pay insurance and taxes. Respondent does not heat the Transit House. The heat comes from Swift & Company, and the cost of the steam is paid by the lessee of the hotel. I do not know offhand whether the rent of Transit House is sufficient to cover insurance, taxes, and the annual charge to depreciation. I do not have those figures available. There is need for a hotel owned by the Stock Yards Company in order to provide its patrons a decent, clean place where they may stay over night, which they may necessarily have to do, within reasonable proximity to the stockyard (T. 2562). The other hotels in St. Joseph are not reasonable in distance and not reasonable in price mostly for this class of patron. [fol. 1829] The ones that are reasonable as far as distance from the stockyard is concerned are not what I would call clean decent places. There are places where one can spend the night near the stockyard at relatively low prices, but not only the price is low but the place is very low. It is not my thought particularly that the Stock Yards Company should provide the shipper a high-quality place even though at a loss. It is my thought that this is a reasonable service to the shipper that should go to a decent shipper, which we hope they all are, that arrive at the yard during the night hours and desire a place to stay, until the market opens in the morning. As to why the shipper should not pay the operator of the hotel compensatory rates so that the operator can pay compensatory rent, I am not debating the hotel situation (T. 2563); but we know that other hotels in that vicinity have to do other things to make them pay, and it is that kind of competition that any hotel has to go

up against now-a-days. If they run a decent place, it is very hard to do so at the rates that are available in these times. I would say that possibly it is true to a very limited extent that the inclusion of the Transit House in the rate base would cost the general shippers to the stockyard, both those who do not patronize the Transit House as well as those who do, to have to help carry the Transit House through moneys paid as yardage charges and feed spread. As to why they should be called on to do that for the advantage of the particular shipper who comes to St: Joseph, the availability is there, demand is there; to an extent they do use the hotel in connection with our 4-H Club Show at a time when we get 300 children loose in that end of town, and it is particularly desirable that they have a place to stay that is under proper supervision, and I think there are a number of reasons why the hotel should be maintained for the shipper that wants to use it. We have other facil- [fol. 1830] ities that probably all of the shippers do not use, but still give service to the ones that can and do use them (T. 2564). In the event the Transit House were totally destroyed by fire and the insurance was collected, as to whether I would advise the directors to reproduce it as a hotel, I hope I never make such snap judgments as that to my directors. I would want to know a good deal more about it and think it over a good deal more than I would to just answer your hypothetical question at this time. I have given a good deal of thought to the hotel matter and the study necessary to determine whether or not it is a needful part of the stockyard, and as such we are claiming it as used and useful. If we did not have this hotel, it might mean we would provide that building, or provide something else of different construction or with a different layout altogether from what we have. That would be the study, I believe, if there is a need there. As to whether I would advise the duplication of the building as it stands today, I do not think any one would advise the duplication of a building that has been built for 30 years (T. 2565). I do not know whether I would advise a building as extensive as the present building. It might be built more to meet modern requirements. I do not necessarily mean modern conveniences, but modern construction and modern availability. As to whether I would recommend to the directors the expenditure for a hotel of a sum of money

equivalent to the cost of reproduction new less depreciation, as placed on this building by Mr. Kosters, and the fair value of the site, as testified to by Mr. Spratt, in order to produce a gross revenue to the stockyard of $1,200 a year (T. 2566), as the case is highly conjectural, as pointed out by counsel for respondent, it would only be a guess on my part, because you would have to consider all the facts, and [fol. 1831] the $1,200 rent is not the only consideration that we have (T. 2567). Without giving it more consideration than we have, the idea just being brought to us at this time, I would not say what we would do.

Horse and Mule Division

Referring to the pure-bred and dispersal sales, which I testified were held in the old horse and mule division, like other things they have been affected by the depression, and by the lack of a market for pure-bred stock at the present time, and there have not been many of them lately. There were two during 1932. The stockyard derived a small revenue from those sales. We charge a higher rate than the regular yardage charges. At one of the sales that we had last year, which I called a dispersal sale, the man went out of business and sold all of his stuff, not only animals but equipment. It was a pretty good-sized sale (T. 2568). Referring to horses and mules that come to the stockyard, the number is shown in the figures. Those are practically all fed en route to some other place; and the figures do not indicate anything as to the business at the stockyard. There have been very few horses and mules sold at the yards recently. At the present time we do not use any of the old horse and mule division for the sale of horses and mules although, as I mentioned in my direct examination, there were negotiations for the use of a part of it for that purpose. That has all been since the first of the year, so that there is nothing definite at the present time. Some cattle and some hogs, in addition to sheep, are fed in the old horse and mule barns. The cattle are fed in the south two barns on the west side (T. 2569). The north one of those two barns is available for sheep, and at times sheep are fed there.

Assuming that some item of property which once was [fols. 1832–1845] used for stockyard purposes, but that purpose has ceased entirely and the property is not being

used for anything, as to whether it is my view that the fact that it was once used for stockyard purposes makes it used and useful property, which is included in the rate base, I think that if a property has been dedicated where the company puts its funds into it (T. 2570) to use it for a definite stockyard purpose, figuring to get its money returned over a period of years, and a rate of return, that it should continue to be included in the rate base, even though the original use for which it was contemplated has discontinued. This may be offset by other enterprises that the company enters into or a facility it erects for a shipper that prove profitable, highly profitable, probably beyond its expectations, and the revenue from which will also go in the rate base.

[fol. 1846] Redirect examination:

Feedlots

I made no specific study to see if the feedlots yield a fair return on the value of the facilities so used. I think I said that if I guessed about it, I would probably say they do not. I had in mind the amount received directly by way of yardage under Item 12-A of the tariff, and not any of the indirect returns or intangible items which we feel make [fol. 1847] these feedlots beneficial to the yards as a whole. If I had included with the amount of direct revenue received under Item 12-A of the tariff, such additional items as the additional yardage we receive when livestock is actually resold in the feedlots, and the yardage we receive from animals that are drawn to this market by reason of the existence of the feedlots, I think I would change my answer, in that I believe with those added that they do pay a fair return (T. 2634). I have made no study of any other facility to see whether individually it earns a fair return. I do not think that respondent's facilities as a whole, under existing rates, yield a fair return. In fact, I know they do not. Many facilities, individually and of themselves, fail to earn any return at all. We get very little return from a scale individually, except we might weigh a car for a billed-through shipment, receiving $2.00 a car, or something like that. We get no direct income from a sewer. Our facilities as a whole are rendering stockyard services. The way we look at it is whether as a whole they yield a fair return (T. 2635). No feedlot has ever been established on the

Fowler Estate. I never heard of that being contemplated. If it did happen, that land would be used and useful for the operations of the independent operator. If he provided land for others to feed livestock at a designated charge per head, that land would be used and useful for the man who was running the feedlot. Such a feedlot would not be on stockyard property. It would not be operated by respondent as a public stockyards, or otherwise. Respondent would receive no revenue from it (T. 2636). Unless in the operation of that feedlot some connection were established with respondent or its business, that feedlot would not bring any business to respondent's yards. I am not relying upon Mr. Barkley's testimony, but on my own testimony. I stated I [fols. 1848 & 1849] agreed in general with Mr. Barkley's statements, which would be subject to specific differences as they appear.

The assignment of feeding facilities to feeders is no different than the assignment of sales pens to commission firms. I have mentioned several times that both are for the convenience of the Stock Yards Company (T. 2637). If any feeders have use for all of the facilities, they are allowed to use them, but as far as monopolizing them in keeping somebody else from feeding, that is not so. We are at liberty to put someone else in to feed as long as the facility is not being used. That is the same theory by which a commission man, as long as he has use and need for certain pens, will be allowed by respondent to continue to use those pens. We reserve the right at any time to exercise our judgment in either reallocating or restricting the use (T. 2638). I recall the statement by Mr. Black and mentioned the fact that it would be difficult to operate an orderly stockyards if there was not some allocation of facilities to users. The feedlots operated by respondent are public in that they are open to the public to feed, and the feeder is open to sell to whomsoever he likes. No restrictions whatsoever are placed upon people that can go to the feedlots and buy livestock from feeders, and if a feeder is responsible no restriction is placed upon the feeding of livestock in those facilities.

[fol. 1850] Anchor Serum Company

There was more than one purpose for preparing Respondent's Exhibit No. 139. In addition to showing the

revenue that we receive through the Anchor Serum activities, which in my opinion provides more than a (T. 2644) fair return for the land occupied by the Anchor Serum Company, it was also prepared with the idea of showing what this revenue is so that if the Secretary sees fit to exclude this land from used and useful property, this revenue should be deducted from the earnings of the company. Using the highest land value and the area actually used by the Anchor Serum Company, the return was about 21 per cent.

[fols. 1851-1863] Transit House

I am not the only one that has expressed an opinion that the Transit House is used and useful for stockyard purposes (T. 2647). Inasmuch as the Secretary allowed it in his previous order, I presume by so doing that he considered it used and useful. I would say that if the directors had not considered the Transit House was essential to the operations of respondent's stockyards, they would not have built the building in the first place. I know they considered it essential when they constructed it, and I know that they felt that way years before I ever came here.

[fol. 1864] Going Concern Value

L. R. Howson, a witness called by respondent, after being duly sworn, testified in substance as follows:

I live in Chicago and am a consulting engineer. I testified in the former hearing. Since that hearing my occupation has been substantially the same as it was at the time of that hearing. My work has followed the same general line, consisting of preliminary investigations, reports, design and construction of utilities, largely water supply and sewerage, and the appraisal of those utilities. Among the more important construction jobs, or reports, I would mention service on a board, and a member of a board of three engineers employed by the City of Cleveland with respect to the enlargement of its water supply, involving a program for the next 25 years, total expenditure of $60,000,000, of which $20,000,000 is planned to go forward shortly. The plans, specifications, and super-

vision of construction of intercepted sewers and treatment works for Racine (T. 2659), Wisconsin, at a total expenditure of $1,800,000, of which about one-half is now built. New water works pumping station for Racine at a cost [fol. 1865] of a half to three-quarter million dollars; intercepting sewers and sewerage treatment for Duluth, on which the first step, $750,000, is now under construction; intercepting sewer and sewerage treatment for Galesburg, Illinois, completed within the last couple of months at a total expenditure of about a million and a quarter dollars; preliminary report on enlarged water supply for Aberdeen, South Dakota; construction of facility plant additions at Ashland, Kentucky. I have just within the past three or four weeks been sanitary expert for the States of Michigan, Wisconsin, Arkansas, Pennsylvania, and New York in the rehearing of the Chicago Sanitary District of Lake Michigan Diversion Case, being a special commission appointed by the U. S. Supreme Court. Those are the more important reports and construction in the interim. I have made twelve or fifteen additional appraisals and have testified in most of them. Some of them are still in progress and testimony has not been given as yet (T. 2660). Those appraisals were pending before the Public Service Commission of Missouri in the Springfield, Mo., water case; the Illinois Commerce Commission in the Kankakee and Peoria Water Works matters; a master appointed by a three-judge court in the Vincennes, Indiana, case; a Federal district court in the Eldorado, Ill., case; before this Bureau in the Denver and Omaha Stockyards cases; before the I. C. C. in the Fort Worth Belt case; and possibly two or three others which I do not now recall. In all these proceedings I computed and testified as to the going value of the utility being valued. I followed the same method which I used in the computation presented in the former hearing in all of these proceedings with one exception which was an approximate valuation and in which I used a percentage basis.

I have been asked to compute the going value of re- [fol. 1866] spondent as of August 1, 1932 (T. 2661). I prepared Respondent's Exhibit No. 143 which represents my computation of the going value of respondent as of August 1, 1932. In making this computation I followed the same method used in my former computation in this

proceeding, which is Respondent's Exhibit No. 8, but the figures are different. I have read my testimony contained in the abstract of evidence of the former hearing. My direct testimony appears on pages 283 to 301 of the abstract and I have there set forth the method in the computation of going value as contained in Respondent's Exhibit No. 143. The additional investigation I made in preparing this exhibit consisted of visiting St. Joe to ascertain the facts relative to the business in the interim between the date of the former computation in 1929 and the end of 1932, and to secure familiarity with the business and any changes in the factors affecting it or affecting its recovery (T. 2662) that might have taken place in that interim. I also interviewed representatives of the company and also a number of livestock commission men, making inquiry as to the receipts, the factors affecting the receipts at the present time, and the factors which would have a bearing upon the rate of recovery of receipts in the reproduction of the yards and its business. I described this additional study in the first four pages of the exhibit. The figures on page 2 relating to receipts were obtained from respondent for the year 1932. The figures relating to interest during construction were secured from Mr. Kosters. The figures on pages 3 and 4 relating to income and operating expenses were obtained from Mr. O'Malley from the books of the company for the year 1932.

I made three computations of going value as set forth in Respondent's Exhibit No. 143 (T. 2663) and also made three additional approximate computations with different [fol. 1867] assumptions as to physical valuation. Based upon spot prices and values as of August 1, 1932, I made two computations set forth respectively in tables 2-A and 3-A on the one hand, and 2-B and 3-B on the other hand. To both of these computations table No. 1 applies. In other words, table No. 1, which is an estimate of the revenues and operating expenses during the recovery period is based upon the recovery of the receipts actually experienced at the yards during 1932, which is the equivalent of 38,973 cars. The two computations are both identical so far as the business is concerned. They differ from each other only in that the business and the computation is based upon two bases of physical plant value, and I included in that land, one being a land valuation as made by

Mr. Spratt and the computation embodied in tables 2-A and 3-A is based upon Mr. Spratt's figures, and the other expresses the figures of land value for 1932, as set up by Mr. Quinn. The details of that computation are set forth in tables 2-B and 3-B. As I stated earlier, both computations of the A and B are based upon the same business and revenues (T. 2664). I define spot prices as the prices prevailing as of the date of the inquiry which was August 1, 1932. I made a third computation based upon a total physical plant valuation of $3,500,000, an arbitrary figure, to determine what the going value with the actual 1932 business would be, based upon the total valuation. The going value of that computation was $358,000 or approximately 10 per cent of the total value including going value. I also made another approximate computation based upon a total valuation of $2,000,000. On the assumed physical plant value of $2,000,000 the going value computation was approximately $400,000 or approximately 22½ per cent of the physical value including lost interest, land, etc. (T. 2665). On page 7 of Respondent's Exhibit No. 143 the first summarization refers exclusively to the spot [fol. 1868] 1932 reproduction, the third and fourth paragraphs refer to the spot or any other basis, that is, they are stated in terms of income return and are, therefore, applicable to whatever value they may be applied to. The range set forth in the first paragraph on page 7, giving the minimum of $294,000 as going value for a total valuation of $5,000,000, is substantially the Quinn land appraisal shown on table B in which the total is shown as $4,988,000, or in round figures $5,000,000. Mr. Spratt's figures brought the going value intermediate between that $294,000 computed on Quinn's figure, and the arbitrary figure of approximately $3,500,000 for physical plant, which gave a going value of $358,000. My other computation based upon the $2,000,000 assumed valuation could also be added to the summarization in the first paragraph on page 7 (T. 2666). In fact, it is added in the third paragraph. In other words, the $2,000,000 total valuation is approximately that figure upon which the present income excess over operating cost is sufficient to yield 7½ per cent return plus 4 per cent for depreciation, which would yield a going value of approximately 22½ per cent of the physical plant value.

Depending upon the final value as fixed by the Secretary, the going value will range in approximately a straight line variation between the limits therein set forth of 22½ per cent for a minimum value of $2,000,000 and 6 per cent or $294,000 for a maximum value of $5,000,000.

Based upon average values and average business over the 6 years, 1927 to 1932, inclusive, I have made another computation of going value (T. 2667). That appears on page 6 of Respondent's Exhibit No. 143, and the three tables following headed respectively, 1-C, 2-C and 3-C. In method the computation is identical to the previous computations. It differs, however, in figures throughout. The [fol. 1869] business of the yards in 1932 was 38,973 cars, as compared to the average business for the past 6 years of 48,015 cars. The income per car and the operating expenses per car were also different in the year 1932 than they were in the average for the 6 years. This computation is based upon the average figures for the 6 years named throughout, both as to business income and operating expenses. The valuation of the physical plant used in this computation was furnished to me with respect to all structural items by Mr. Kosters of Stone and Webster, and the land valuation was made by Mr. Spratt, both being 6 years' average figures. On page 7, I have likewise summarized my conclusions as to the going value based upon the six-year average values and business. The second paragraph refers explicitly to this 6-year average period, and the third and fourth paragraphs are applicable in the same manner that they were applicable in the spot 1932 conditions. That shows the going value to be approximately 9 4/10 per cent of the physical plant value, when computed upon the average physical reproduction and the average business in that 6-year period or a going value of $472,644. I have abbreviated Respondent's Exhibit No. 143 very much with the idea that it would be supplemental to the previous exhibit, Respondent's Exhibit No. 8, filed in this proceeding. I have incorporated none of the general statements which appear in that exhibit, the present exhibit being confined to an application of the method to the existing conditions (T. 2669). If the previous exhibit had not already been of record, I, of course, would have embodied the same general principles in Respondent's Exhibit No. 143. For use in the present case, the tables ap-

pearing in Respondent's Exhibit No. 143 should take the place of tables appearing in Respondent's Exhibit No. 8. If the Secretary bases a prescription of rates for the [fol. 1870] future on a consideration of earnings over a period of six years, the computation of going value shown in tables 1-C, 2-C and 3-C immediately preceding page 7 of Respondent's Exhibit No. 143, should be used. It follows that he should also use average values for the items composing the physical plant for this reason, that to use values of physical plant as of one period and figures as to the income of another period, unless it be in the period of particular normalcy where there is no change in price levels or income during the range covered, cannot help but result in an answer that is misleading, and not a reflection of the actual conditions (T. 2670).

I have read the testimony of Walter L. Mack, William E. Spratt and Frank M. Atkinson, contained in the abstract of evidence of the former hearing. I have read paragraph 73 of the findings, conclusion and order entered in this proceeding by the Acting Secretary of Agriculture on July 20, 1931 (T. 2671). Neither of these three gentlemen included in their respective land appraisals any of the same elements of value included by me in my former computation of the going value of respondent. I have an opinion as to the correctness of the following statement appearing in paragraph 73 of said findings, conclusion and order of July 20, 1931: "It is very clear, from the record, that all of these appraisers included in their valuations the going concern elements inhering in the land, because of its integration in, and used as a part of a going, operating concern, namely, the stockyards" (T. 2672). My opinion is that the element of going value was not included. I have read the testimony of both direct and cross-examination of William E. Spratt and Theo. J. Quinn in the present hearing. I also read the exhibits which constituted their appraisal re- [fol. 1871] ports (T. 2674). Neither of these gentlemen included anything in their respective valuations which was included by me in any of the computations covered either by Respondent's Exhibit No. 143 or my testimony today. My computations and Respondent's Exhibit No. 143 contain no elements in the computation of going value which were included in the land value. There is no duplication

of elements of value in any respect whatsoever by Messrs. Spratt and Quinn on the one hand and me on the other (T. 2675).

Cross-examination:

A going concern is a property which through the process of time has been designed, constructed, operated, and financed into an income. I would not say that all concerns are going concerns. In discussing going concerns, I limit myself to utilities, because that is the phase in which I am qualified. I am not qualified in industrials. Any utility which is serving the public in a useful service, at costs which the public can afford to pay, and producing a service which has a future usefulness, is, in my opinion, a going concern, and has a going value. That would be regardless of whether the property were making profits at the particular moment of the investigation, assuming that that same property is under regulation, is performing a needed service (T. 2676) and can perform that service at rates which its takers can afford to pay, which gives the assurance of continuity. That would also be regardless of whether or not the utility has defaulted interest on its bonds and was still in default, if the service that it was supplying was a needed service that would have to be supplied by that utility or any other in case it went out of business, and the demand of the future were assured, and this utility could supply that demand at rates which the service could afford [fol. 1872] to pay. By "if the demand of the future was assured," I mean that value as a whole is dependent upon future usefulness. Expressed a little differently, I mean if there is such an assured demand that you are reasonably certain that the public will go on using the service of the utility and pay its rates. If forms of competition have sprung up which make it doubtful that the utility will go on being patronized by the public and the utility cannot make profits and is paying no interest on its bonds and that income cannot be increased and the service has become less than the value of the service to the user, I would say the elements of going value would substantially drop out (T. 2678), and assuming further that it has gone beyond the doubtful stage and that these facts are demonstrated rather than being in a position of doubt or undemonstrated

(T. 2679). Assuming you have an interurban trolley line which is operating. It is running its cars, some people still ride on it. However, it is unable to and was even before the depression, unable for a long period of time to pay its stockholders any dividends, its surpluses were used until they disappeared, and finally it came down to the point where it defaulted its bond interest, but it is still running and people are still riding on it, it still has an income, but nobody can be found who knows how to make it a business that will even pay interest on its bonds, that utility may or may not, under the situation outlined, possess the going concern element. It depends upon the future rather than the conditions of either the past or the present, unless the future has been exhausted. For instance, we have a number of illustrations of that kind. There occurs to me now the Chicago, North Shore and Milwaukee and the South Bend Electric, which are the high speed lines out of Chicago and also the Chicago, Aurora and Alton. I think all of them were in receivership for years, were re-[fol. 1873] organized, service improved, and so far as passenger traffic today is concerned the Chicago, North Shore and Milwaukee has a substantial monopoly between Chicago and Milwaukee, whereas ten years ago or even five years ago they were carrying a small percentage of the passengers and had been so carrying them for a period of nearly 20 years, during all of which time they were generally regarded as dead investments possibly, and usually referred to as poorly conceived. Whether the trolley line might, in so far as the line itself is concerned, have a going concern element in it would depend wholly on the conditions surrounding that trolley line further than you have stated them to me. That is, it would depend upon the future of that trolley line rather than its present condition, in my mind. If I were called upon to determine its going concern value right now, I would have to know something of the use and the development of plans to which the prospective investor might put it. For instance, if I were asked to report upon a going value of that electric line which you outline, I would have to know the future possibilities and potentialities which are in the mind of the prospective investor, so that I might advise him as to what that going value might be as well as to what it is under the present

conditions. I would want to advise him as to both if I was asked to. If a thousand people a year had been riding that trolley line, it would have an attached business to that extent. As to whether on the basis of the cost of recovery of attached business it would have a going concern value, I could not tell you without knowing the facts relative to the physical plant valuation and other items of going value under a spot condition where a property, as we will say, is operating at a deficit below operating charges, with no prospects of ever getting beyond that stage, no matter who was to reorganize it or what was to be done with it, that prop- [fol. 1874] erty is eventually going into the discard, and if I were to compute the value on that property, based upon that ultimate situation, and with the facts as stated here of operating at a loss, without any fixed charges, simply an operating loss, a condition that never could be changed, the going value, as I would compute it, would be negative rather than positive, and the road would have a junk value, which would be less than its cost of reproduction (T. 2682). I would employ for the computation of going value of the interurban line the same method I have employed here in computing the going value of the St. Joseph Stock Yards Company's business. If I assumed that the construction period or reproduction period of that trolley line were one year as I have assumed here, and if I assumed that the idleness or the use of each stage of that road for one year would lose its passengers today, and it would take five years in which to recover those thousand passengers per year, my computation would come out to a negative going concern value because it is earning less than the income credits and, therefore, the increments of going value in the various years will be negative, rather than positive, and the summation of them at the end of the five-year period would also be negative. The interest or the return which the starting property would be receiving in the form of a credit from lost interest during construction and from the interest on the unexpended bank balance during that year would be more than the revenues from operation, therefore, each year's increment to the going value would be negative, and the total would be negative, and the property would be worth less than the physical cost of reproduction (T. 2683). The net revenue of the company is one element and quite

a considerable element, simply demonstrating what everyone knows, that a business which produces no return is not [fol. 1875] worth much, if it has no possibility of ever producing a return, whereas, a business that does produce a return becomes increasingly attractive as the rate of return increases up to the point where, under regulation, the maximum is reached. In my opinion, going concern value is synonymous with going value. That is how I use it in my vocabulary, and it may be defined as the difference between the total value of a property with its construction, established business, demonstrated ability, and so forth. The excess of that total value over the value of the structural items, including their lands, in other words, the bare bones (T. 2684). When I say "value of structural items," I mean the cost of reproduction new less depreciation. That is the difference between the sum total of finally determined value and the depreciated valuation of the physical and structural items including land. When I used the term "value" in connection with my statements with respect to structures as being synonymous with the cost of reproduction new less depreciation, I personally think that cost of reproduction new less depreciation in most cases is the best index of value, and not necessarily the absolute; but, in this case, I think the cost of reproduction is the best indication of the value of the physical property and the cost of reproducing the business, which is what is done in this computation of going value, is comparably the proper and most illuminating method of computing the value of the business attached to that physical property (T. 2685). I do not think that the cost of reproduction new less depreciation of structural property is always the same as the value of such structural property. I think it is in practically all cases the best indication of value. Assuming that some person would decide to reproduce all the structures of the St. Joseph Stock Yards, but to reproduce them way out in the desert where [fol. 1876] there is no livestock, no packing plants, no railroads, no reason whatever for a stockyard, I would assume that the cost of reproduction of those structures would at least be as great as it would be to reproduce them where they are located, and they would be valueless. That is one of the exceptions which I indicated to the application of

the cost of reproduction method, because it places a utility service at a location and under conditions which have no future usefulness, no potential service to the public, and is, therefore, an ill-conceived venture and one in which in ascertaining the value, cost reproduction is not in itself a guide. As to what element or attribute of property converts cost of reproduction new into value, I believe that cost of reproduction new less accrued (T. 2686) depreciation is the best index of value, in all cases where the property is serving a useful need to the community, has developed that service fully and is performing it so satisfactorily that it is better than that same service could be supplied by others and at a cost, and I think character of service which insures the continuity of it for the future. Under those conditions, I believe that the cost of reproduction new less accrued depreciation is the best indication of value. The element which the stockyard in the desert lacks which renders its structures junk or worse and which is possessed by the St. Joseph Stock Yards which renders its structures worth the cost of reproduction new less depreciation is the ability to furnish service, the record of service successfully performed, the demonstrated ability to make that service worth its cost to those availing themselves of it, and the assurance that that service is necessary in this community for the future. That is not the going concern element. The cost of reproduction of physical structures inheres to this property independent of the going concern [fol. 1877] element. The going concern element is over and above that and is positive, whereas, with the desert illustration which you have given, the physical structures would not be worth their cost of reproduction, and the going value would be so negative that the results would indicate just what your (T. 2687) preface termed it, a "venture" so foolish that it probably would never be entered into. In my exhibit, which is Respondent's Exhibit No. 143, and referring to page 7 thereof, there are stated thereon 3 different values in dollars and then there are 2 other percentage variations. I regard each of those three values for which the figures are given as applicable and as being the going value under the conditions for which each one is respectively computed. That is the present going value. I have three different present going values for this business based upon different bases of business and physical valuation, each applicable to its own particular condition

(T. 2688). I stated that the Secretary should find the going value in a range between $294,000 and $358,000, assuming that he adopts as the basis of his final valuation figure here the cost of reproduction of the physical property at spot 1932 conditions and if he so does, he should also base the computation of going value upon the business prevailing in 1932, and if he were to come to a total valuation of approximately $5,000,000, the $294,000 computed for going value would be the correct figure under those conditions. If, however, using the same basis of physical valuation and earnings, that is, spot 1932, but coming to a total valuation of $3,850,000, the resulting going value in that case and the going value which I think should be used would be $358,000. Whether the amount of going concern value be $294,000 or $358,000, it is based on the same number of carloads of livestock or carload equivalents, namely, the number received in 1932 (T. 2689). The variation in the amount of going [fol. 1878] concern value from $294,000 to $358,000 would depend entirely upon the variation in the values found for the physical property. I think there is a very obvious relation between the values of physical property and the value of such going concern elements as may inhere in the business. For illustration: as between two businesses, each of which will produce, we will say, for illustration, $100,000 per year net revenue, but one of those involves an expenditure for physical construction of $2,000,000, and the other of $4,000,000, it is obvious that the venture which will earn $100,000 net on one-half as much an investment is worth more to an investor than is the one requiring the larger. In other words, the more return, up to the limit of fair return, under regulation, that a property can earn on a given investment, the more attractive it is to the investor, or expressed in dollars, the more the going value, which is the value of that created income. There are a number of ways which I know by which people have sought to ascertain the amount to be allowed for going concern value. I don't call the percentage way, that is, to take a certain per cent of the physical value and call that going concern value, a method (T. 2690). I call that an approximation derived for its foundation from computations made by real methods. In other words, simply grabbing a percentage out of the air, even though it may be an average of a lot of other allowances, I scarcely call a method. It is a con-

clusion derived from the application of other methods, I would say. I don't understand that arriving at the amount of going concern value by the use of the percentage way is a negation of what I said in explanation of the relationship of value to the going concern element in my explanation of the first paragraph on page 7; that is, if the percentage way recognizes in its application the difference between a good utility, a mediocre utility, and a poorly-[fol. 1879] conceived utility, so that the percentage adopted reflects that divergence of operating conditions and results, then, I think it is in conformity with what I said; but, applied blindly, as a general average of a percentage, resulting, say, from a large number of court or commission cases, without regard to the conditions surrounding each utility value, I think then it is not a negation but it is simply nothing more than an arithmetical average (T. 2691). The percentage method would always ascribe the greater going concern value to the business having the greater physical property values if you simply allowed a fixed percentage of going concern to every utility irrespective of conditions (T. 2692). Assuming the same percentage were used on two properties, otherwise exactly the same, the percentage application would give a higher going value for the extravagant property than would the comparative method which I used, unless the computation of the comparative method were adjusted to eradicate the extravagance. If the percentage method were used in connection with the values of the physical property of the St. Joseph Stock Yards, that would give an indication of the going concern value of that business within a range; that is, applied (T. 2693) purely as an average without respect to the particular property, it would, of course, be a general range. In other words, it would on its face assume that the St. Joe property was the average of all of these other properties on which these decisions have been handed down. I certainly would not attempt to state whether it is without full review and much fuller knowledge of the decisions and the properties to which they apply.

In computing the number of carload equivalents represented by drive-in stock, I think I used 25 cattle per car, 125 sheep, 70 hogs, and I think 25 horses and mules, and I think also 70 calves. I state on page 3 of Respondent's [fol. 1880] Exhibit No. 143: "In order to determine the

rate at which it would be practicable to recover the receipts of the stockyards upon the beginning of operations after the reconstruction period, I made inquiry from five of the best informed commission men, namely, Messrs. McKee, Davis, Austin, Baker and Shotwell, all of whom have been in the yards 25 years or more and who are, therefore, particularly well informed as to the factors affecting the receipts of stock at St. Joseph. I also inquired from Mr. Vant, Mr. Carroll and Mr. Topping, officials of the St. Joseph Stock Yards Company." Mr. Carroll and Mr. Vant are the same persons referred to on page 292 of the abstract. Mr. Topping has succeeded Mr. Barkley referred to on page 292 of the abstract. McKee, Davis, Austin, and Baker are the same persons referred to on page 299 of the abstract (T. 2695). Mr. Shotwell was not interviewed in connection with my former report. He is a sheep salesman for John Clay and Company. The method employed by me in preparing Respondent's Exhibit No. 143 is the same as the method pursued in the preparation of Respondent's Exhibit No. 8, and the general principles to which I testified at the former hearing, as shown in the abstract of record at pages 283 to 358, are as applicable now as they were then. The difference in conclusions now from those arrived at at the time of my former report and testimony results from the use of different figures because I used then the figures then applicable, and I am using now the figures which are now applicable (T. 2696). The description of Messrs. McKee, Davis, Austin and Baker contained on page 308 and Messrs. Vant and Carroll contained on page 310 of the abstract is as applicable today as it was then. I do not know whether Mr. Shotwell has ever had any experience in the operation of a stockyard. I do not think [fol. 1881] he has ever had any experience with or observed a stockyard going out of business temporarily and being rebuilt and then undertaking to recover it. I do not know whether he has ever had any experience along that line with any other kind of business (T. 2697). Mr. Topping has both managed and is managing this stockyard. I do not think he has ever had any experience along the line of seeing a stockyard or any other business temporarily suspend and then undertake to recover its business. It is still true that I have no personal familiarity with any data or experience of mankind upon the construction of a new stock-

yards under present conditions as large as the St. Joseph Stock Yards and the attraction of business to it (T. 2698). The statement appearing on page 311 of the abstract reading as follows: "When we have made estimates in the past and the property has been constructed and the actual cost developed, we always compare those things. That has all added very materially to my fund of useful information in making estimates for the future. I have had no such similar guiding star with respect to the recovering of stockyards receipts. I have never gone through a stockyards business reconstruction, nor has anyone else to my knowledge," is still true.

Redirect examination:

I recall a series of hypothetical questions dealing with utilities which had defaulted their bonds, had no earnings, one of which was a more or less defunct interurban line. Those facts in no way conform to the facts as I found them in respect to respondent (T. 2699). If the Secretary in determining the value of the physical property of respondent fixes that value at the cost of reproduction new less depreciation, he has not in that finding made any allowance to respondent for going value, because he has appraised, or [fol. 1882] he has valued the bare bones of the physical structure without valuing a business attached to them, and inherent in the property as a whole. If the Secretary finds the value of the physical plant of respondent, including land, to be $2,000,000, 10 per cent would not be a fair allowance for going value. I have actually computed the going value for such a valuation and it approximates $400,000 (T. 2700). Ten per cent is the most commonly used figure. Ten per cent would not be a fair allowance for going value on a valuation of $2,500,000. Approximately 17 per cent would be a fair allowance, of $360,000, based upon the 1932 spot earnings.

Recross-examination:

When I say that 17 per cent is a fair allowance on a physical plant of $2,500,000, I mean as applied to the property of the St. Joseph Stock Yards Company here and now and that the $2,500,000 was the total value, including the going value (T. 2701). I do not attach any importance whatever to the fact that the going value I would recom-

mend happens to be 17 per cent. The 17 per cent is working backwards. It is a deduction from a computation rather than a computation in itself. If I had worked backwards and the percentage happened to turn out 7 per cent, I would have said 7 per cent. The way I got the 17 per cent is that I made four computations on the spot basis, two of which are shown in my report in detail, and two others that were made for a wider range of value, and not carried to the refinement of those in my report. From those four computations, it is practicable to plot a curve showing the general relation between the excess above operating charges expressed in per cent of physical plant value platted as one ordinant against going value in physical plant of the other ordinant, the 17 per cent resulting from a scaling-off of that [fol. 1883] curve (T. 2702). I arrive at going concern value in a way which I believe to be the proper way, but it has nothing to do with the ascertainment of the percentages of the physical value. The percentages are deductions from the computation.

Referring to page 325 of the abstract and the paragraph which states: "My conclusion is based on the assumption of an average of 54,275 cars over the five-year future period, but I did not undertake to determine for any particular year. I am stating what a study of the past would indicate as the average for a five-year future period. So long as it averaged 54,275, no amount of fluctuation of any particular year would materially affect my computation, but if the five-year average were changed, it would affect my whole computation in proportion as the two figures vary," the five-year period used for the future in the former hearing was to begin in 1930 and end with the year 1934. Approximately two years of that period have yet to run (T. 2703). I think that in view of the past three depression years it would be quite unlikely that the receipts for that five-year period will average 54,275 cars.

Redirect examination:

In view of the past few years, it is also quite unlikely that the receipts for the balance of that five-year period will exceed the 1932 receipts. I found from my inquiries from those men at the yards who were, in my opinion, in

the best position to know, such a divergence of opinion that I made the computation on the two bases, on that account,—one, an average, and the other on the basis that the 1932 figures, correctly represent the figures for the future (T. 2704).

[fols. 1884-1886] M. J. O'Malley, a wit-ess called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

Working Capital

I am Secretary and Assistant Treasurer of the St. Joseph Stock Yards Company and testified in the prior hearing (T. 2705). I still have the same employment I had at the prior hearing, except that I was Assistant Secretary and Assistant Treasurer at that time. I was elected Secretary in February, 1932. My duties have been substantially the same since the prior hearing as they were at the time of the prior hearing. I have charge of all the accounts and records of respondent and by reason of my employment have a knowledge of the amount of working capital required by respondent. This knowledge is gained by an actual experience of 22 years.

[fol. 1887] Income for Rate-making Purposes

At the prior hearing in this proceeding I prepared Respondent's Exhibit No. 11, which stated the income for rate making purposes of respondent for the year 1928 and also the first six months of 1929. I have examined pages 468, 469, and 470 of the abstract of evidence. Those pages contain a complete description of the method of preparation of Respondent's Exhibit No. 11. I also prepared similar exhibits which were introduced by me in the hearing at Minneapolis in the injunction proceedings pending in the United States District Court for the Western District of Missouri, St. Joseph Division, in the case entitled St. Joseph Stockyards v. United States of America and Secretary of Agriculture, in equity No. 204. These exhibits covered the calendar year ending December 31, 1930

and the period from October 1, 1930, to September 30, 1931. Those were given Petitioner's Exhibit Nos. 11 and 12 in that proceeding (T. 2714) and are Respondent's Exhibit Nos. 104 and 105, respectively, in this proceeding. Respondent's Exhibit No. 104 shows a net operating income for rate making purposes for the year 1930 of $251,353.40. [fol. 1888] Respondent's Exhibit Nos. 144, 145, 146, and 147, were prepared by me in exactly the same manner as Respondent's Exhibit No. 11 introduced at the prior hearing (T. 2715) following the method outlined on pages 468, 469, and 470 of the abstract of the former hearing except that for the year 1932 I used a different item for depreciation reserve. In prior years I took the entire amount of depreciation that was charged against operation during the year as taken from the books and used a compromise figure which was agreed upon between Mr. Kosters and Mr. Henrici as the straight line depreciation, based upon the cost of reproduction new, contained in the respective appraisals of Mr. Kosters and Mr. Henrici. I fully explained this in my testimony in 1929. For the year 1932, I have used the amount of depreciation as charged on the books for the year, and have deducted from this amount, as recommended by H. J. Saunders, $100,000, and added a difference to our profit as shown on the books (T. 2716).

Respondent's Exhibit No. 144 shows the net operating income for rate making purposes for the year 1927 to be $229,749.06. Respondent's Exhibit No. 145 shows the net operating income of respondent for rate making purposes for the year 1929 to be $259,888.14. Respondent's Exhibit No. 146 shows the net operating income for rate making purposes of respondent for the year 1931 to be $185,585.04.

[fols. 1889 & 1890] RESPONDENT'S EXHIBIT No. 147

Below is page one, or the summary sheet of Respondent's Exhibit No. 147, showing the net income for rate making purposes of respondent for the year 1932:

Net Profit Per Books—before Additions & Deductions			$62,645.76
Additions			
Casualty Insurance Refund Avg. 5 years		$6,128.64	
Eliminations: Depreciation			
Per Books	$122,509.92		
As recommended by H. J. Saunders	100,000.00	22,509.92	
O. R. E. Insurance		4.68	
O. R. E. Depreciation		208.85	
Fiscal Agents & Trustees		304.70	
Taxes, Real Est. & Personal Property		4,259.14	
Bond Interest		46,006.94	
Bond Discount		4,855.83	
Liberty Loan Bond Subscription		7.50	
Bad Debts		33.00	84,319.20
			$146,964.96
Deductions:			
Rent & Lease Income		$531.36	
Interest Received		5,801.19	
Dividends on Outstanding Warrants		5.00	
Dividends on Buchanan Hotel Co.		122.50	
Casualty Insurance Refund Actual		4,725.71	
Discount on Bonds		500.00	11,685.76
Net Operating Income for Rate Purposes			$135,279.20

[fol. 1891] Change in Conditions Affecting Income

I heard the statement of Mr. Bachmann that figures are contained in Government Exhibit No. 121-A from which a statement similar to pages 2, 3, and 4 of Government Exhibit No. 124 could be prepared in order to show what he considered the net operating income of respondent for the years 1927, 1928, 1929, and 1930. From my knowledge of the business of respondent, I know that certain conditions existed during those years which do not exist at the present time which are of a permanent nature (T. 2720). First, for the years 1927, 1928, and 1929, and a part of 1930, respondent operated the St. Joseph Belt Railway Company, under which management it reduced the operating expense of both companies, below what they would have normally been, had each been operated separate and distinct. For example, certain offices which would have been essential to each were occupied by one person acting for both compa-

nies; second, a drastic reduction in the price of corn was made during the year of 1932, which materially decreased the spread or profit we were making on corn as compared to prior years; there was also a reduction in hay prices, effective January 29, 1933, which materially decreased the spread on hay; third, the number of head of livestock received has substantially decreased, as shown by the figures for 1932, as compared to the figures for prior years—this decreased our revenue received from yardage, as well as the volume of feed sold and the consequent profit thereon —Mr. Topping testified as to the permanency of this situation; fourth, there has been a substantial change in the method of arrival of livestock, the truck-in receipts in all species having increased substantially, with a corresponding decrease in the arrival by rail—this has reduced our [fol. 1892] revenue for loading and unloading; fifth, as a result of this decrease in receipts by rail and increase of receipts by truck, the total amount of feed has substantially decreased, due to the fact that truck-in animals are fed by owners, a substantial amount of feed less than animals received by rail (T. 2721). The third and fourth items will be covered by exhibits prepared by Mr. Melkowski. The last item was given special study by Mr. Gorman (T. 2722).

Effect of Sale of Belt

I have prepared Respondent's Exhibit No. 148. During the years 1927, 1928, 1929, and part of 1930, the St. Joseph Belt Railway Company and respondent were operated jointly. By that I mean that the salaries of a general manager, traffic manager, auditor, treasurer, purchasing agent, cashier, superintendent, one stenographer, one timekeeper and storekeeper were joint employees of both companies. There were also certain other expenses, such as rental and the entire expense of the traffic department, which were borne jointly by these two companies. When this joint operation ceased August 1, 1930, it was still necessary for the respondent to continue to have each of these employees which previously had been joint employees (T. 2723). This company was no longer able to charge a portion of its traffic expense to the St. Joseph Belt Railway Company and found it could not reasonably reduce that traffic expense. In fact, that traffic department expense has actually increased since that time. Therefore, the expenses for the

years 1931 and 1932 and also five months of 1930 were larger to the extent to which in previous years the items mentioned had been charged in part to the operation expenses of the St. Joseph Belt Railway Company. On this exhibit, I have shown for each of the years 1927 to 1932, inclusive, that portion of the joint expense which was [fol. 1893] charged to and paid for by the St. Joseph Belt Railway Company. First, the two items, 1931 and 1932, represent a portion of the pension of the general manager which the Belt Railway continued to pay up until April 1, 1932. They are no longer paying any portion of this. The second item is the salary of general superintendent Sack, who, up to the time of his retirement April 1, 1932, was a joint employee. In these last two items I referred to the portion of our expense which still existed in 1931 and 1932. From my study of respondent's records and my knowledge of its operations, it is my opinion that respondent's expenses would have been greater in the year 1927 had not the respondent and the St. Joseph Belt Railway Company been operated jointly. They would have been greater by the amount of (T. 2724) $25,478.34. The expenses for the succeeding years would have been greater by the following amounts, as shown on Respondent's Exhibit No. 148: 1928, $24,323.92; 1929, $23,836.22; 1930, $15,268.63; 1931, $3,552.54.

If the Secretary of Agriculture gives any consideration to the earnings of respondent in the year 1927 as a guide in determining what the probable future earnings of respondent will be, he should increase our expenses by $25,478.34, and thus reduce the net operating income for that year by that amount. He should likewise reduce net operating income for the five succeeding years by the amounts given (T. 2725). That is because at the present time the situation with respect to the general operation of the Belt no longer exists. To the extent that the respondent and the St. Joseph Belt Railway Company are no longer jointly operated, the income for the previous years is not comparable to the income that can be expected in the future years.

[fol. 1894] Reduction of Feed Spreads

Respondent's Exhibit No. 149 was prepared under my direct supervision from the records of the company. Dur-

ing the year 1932 we had a drastic reduction in the price which we charged for corn, and also last month the hay prices were reduced. These changes in prices had the effect of materially reducing the spread on these items of feed which respondent (T. 2726) had been receiving in prior years. By spread I mean the difference between the purchase price and the selling price which represents our gross profit per unit. I shall begin my description of the exhibit by referring first to sheet 7, upon which I have shown the basis by which I have arrived at our present spread on corn. These figures are all taken from our records, and are really self-explanatory. They cover the purchases of corn in the year 1932 after the reduction in the corn rate effective June 2. They indicate that our present spread is slightly over 45½ cents per bushel. On sheet 4 I have compared this present spread with the spread in existence during the years 1927 to 1931, inclusive, and also the spread for the first 5 months of 1932, as the new reduced corn rate did not go into effect until approximately the first of June, 1932. I show for each of those years exactly how I arrived at the spread of corn for each year. For example, in the year 1927 the spread on corn was 62 cents per bushel. I then applied that spread on corn for the actual number of bushels sold in that year, resulting in a gross profit on sale of corn of $81,353.42. I then multiplied the present spread on corn of $.4556 by the same number of bushels, and the result is $59,781.78, which would have been the gross profit on the (T. 2727) sale of corn in 1927, had the present spread been in effect. The same computation has been made for each of the other years. The [fol. 1895] figures for each of the years on sheet 4 in the column entitled "Reduction of Income" indicate the amount by which gross earnings of respondent for the years shown would have been decreased had the present spread of corn been in effect during those years. The respondent gets gross profit on the sale of feed from the spread between the cost price and the selling price. In effect, when respondent's tariff became effective on June 2, 1932, its rates applicable to the sale of corn were reduced. In comparing the income from the sale of corn for all prior periods to the income which can be obtained in the future, to the extent that a larger corn spread is used, the income produced by that corn spread will not be indicative of what can be ex-

pected in the future. I have made the same sort of computation in respect to hay (T. 2728). Prairie hay appears on sheets 2 and 5 of Respondent's Exhibit No. 149, and alfalfa hay on sheets 3 and 6. They were computed in much the same manner as the pages applying to corn. Page 1 is a summary of the other pages, and on it I have taken for each of the three items of feed, prairie hay, alfalfa hay, and corn, the totals for each of the 6 years appearing in the columns headed "Reduction in Income," and on sheets 2 and 3 and 4, in the last column, I have totaled these amounts for each of these 6 years. I have also shown a total on each item of feed for the 6 years, and the grand total on all three items of feed for the 6 years. These last items have been divided by 6 in the last line to show what would be the 6-year average. If the Secretary of Agriculture gives any consideration to the earnings of the respondent for the past 6 years as being indicative of probable earnings in the future (T. 2729), he would have to take the amounts shown on sheet 1 from the gross income for each of the years shown, or the average for the 6 years for use with the 6-year average.

[fol. 1896] RESPONDENT'S EXHIBIT No. 149

The following is sheet 1 of respondent's Exhibit No. 149:

Summary of Decrease in Feed Income, Application of Present Spread to Prior Periods

	Prairie Hay Amount	Alfalfa Hay Amount	Corn Amount	Total Amount
1927	$5,963.25	$2,461.55	$21,571.64	$29,996.44
1928	9,583.87	4,314.89	27,050.31	40,949.07
1929	6,568.58	5,061.85	32,555.85	44,186.28
1930	4,946.28	6,942.65	29,132.93	41,021.86
1931	2,149.44	3,971.09	21,770.83	27,891.36
1932	2,087.44	3,213.54	5,816.74	11,117.72
Total 6 years	$31,298.86	$25,965.57	$137,898.30	$195,162.73
6 year average	5,216.47	4,327.59	22,983.05	32,527.12

I do not think it would be fair to assume that the average earnings of respondent from feed in the future might be expected to equal average earnings for the past 6 years, less a deduction for each of the years shown in the last column of sheet 1 of Respondent's Exhibit No. 149. That assumption could not be made unless it might reasonably be expected that as much as that would be sold, on the aver-

age, during the next future years as was sold during the period of 1927 to 1932, inclusive. That would depend, first on the volume of receipts, and second upon the percentage of receipts coming in by rail and by truck. Mr. Melkowski will cover the effect of the decline in receipts, and Mr. Gorman will cover the effect of the change in receipts from rail to truck (T. 2730).

[fol. 1897] Land Values

I had charge of the records of the respondent in 1919. Those records indicate that on February 28, 1919, and March 17, 1919, respondent owned all of the capital stock of the St. Joseph Warehouse & Cold Storage Company. On the first date the sale of .31 acres of land by respondent to the St. Joseph Warehouse & Cold Storage Company was recorded, and on the second date the ledger credit was made.

Cross-examination:

The exact title of my position with respondent is secretary and assistant treasurer. As secretary I have charge of the company's accounts. I am not a certified public accountant: I could never qualify in that respect. I am not a graduate of any course in accountancy. I have practical knowledge over a long period of years. I have had experience with the St. Joseph Stock Yards Company for 22 [fols. 1898–1906] years, and prior to that, I was with Swift & Company at Kansas City. While with Swift & Company I was employed from being an office boy through the various accountancies up to chief clerk. As chief clerk, in a general way, I had something to do with the accounting of Swift & Company. By in a general way I mean I had charge of them to see that their work was performed. I was pretty familiar with the law of debit and credit (T. 2734), and that is all there is to accountancy. As chief clerk of Swift & Company, I was never a ledger man, except the salary ledger. My position as chief clerk was not comparable to that of a bookkeeper. I never ran a ledger. I consider my experience, both with Swift & Company and the St. Joseph Stock Yards Company, as bookkeeping because we had a large force of men and accounts for different things, and they all had to balance out, operating state-

ments and everything. I helped at times to prepare them. I do not do all the auditing for the St. Joseph Stock Yards. I do my portion of it, in fact, I get around to see how the accounts are in line (T. 2735). The auditing done by Swift & Company is a periodical audit. A part of my title is that of auditor, you might say private accountant. The contribution of the Belt Railway made to the auditor's salary was a contribution to my salary, but in amount it was rather small. There was also a contribution to the treasurer's salary, but that was not a contribution to my salary. I was not treasurer at that time. I was assistant treasurer. I am not treasurer now. I am assistant treasurer (T. 2736).

[fol. 1907] Income for Rate-making Purposes

Mr. Henrici and Mr. Kosters agreed on the service lives of the depreciable property, and that worked out on the straight line basis came to the compromise figure of $126,900, as shown in Respondent's Exhibit No. 10 and described on pages 403 and 404 of the abstract (T. 2762).

Effect of Sale of Belt

Referring to Respondent's Exhibit No. 148, the thought behind that exhibit is that respondent now has to assume all of that expense which was once borne by the Belt Railway. I had this exhibit prepared (T. 2763).

At this point counsel for the respondent stated that his purpose in the preparation of these exhibits was that if the Secretary is to consider income in years prior to 1932, and conditions which existed at that time and which affected income and which conditions no longer exist, he necessarily must take into consideration the extent to which those changed conditions have affected the income in those years. For example, the year 1927 is not indicative of present operating conditions, at least to the extent of $25,478.34, as shown by Respondent's Exhibit No. 148 (T. 2764). The expenses shown in that exhibit represent a proportion of the salaries for men who were in the joint service of the two companies. Referring to the item "general manager 1" [fol. 1908] and "general manager 2," the footnote will explain that. Mr. Barkley was general manager up to and including the year 1929 and then he was on a pension, and Mr. Topping has been general manager since that time (T.

2765). The Belt Railroad paid part of Mr. Topping's salary during 1930 and there might have been a slight amount in the latter part of 1929. The compilation, which is Government Exhibit No. 142, was prepared under my supervision in response to a request from Government counsel (T. 2862). That exhibit represents the amount of salary paid by the Stock Yards Company for each of the six years, 1927 to 1932, to the various men holding the positions indicated in the left-hand column of the exhibit. It does not include in any way the amount of salary these employees received from the Belt Railroad Company. There were no reductions of salaries in any of these positions made at the beginning of the year 1933, and none have been made since that time. I don't think that any reductions were made in 1932 which, if carried into effect through the year 1933, would make the total salary for 1933 less than the salary for 1932 (T. 2863). Government Exhibit No. 142 shows that the proportion of joint salaries paid joint employees by the St. Joseph Stock Yards Company for the years 1927 was $19,988.33; 1928, $20,025.19; 1929, $20,688.54; 1930, $23,140.80; 1931, $29,518.29; 1932, $29,530.42. Referring to Respondent's Exhibit No. 144, page 1, the item casualty insurance refund average for five years $4,926.90, which is an addition, and the deduction casualty insurance refund actual, $5,899.12, the latter figure represents the actual amount received during the year 1927, and this amount is deducted from the total income, and the average amount received during a five year period, namely $4,926.90, is added (T. 2768).

[fol. 1909] Reduction of Feed Spreads

Referring to Respondent's Exhibit No. 149, I stated that respondent decreased its charges for feed and also decreased the spread. I presume the reason for lowering prices was primarily the conditions of the times. In other words, it was a concession to these hard times (T. 2769).

I stated on direct examination that it was my opinion that if the Secretary should base his determination of reasonable rates on a consideration of six years operation, he should take into consideration the showing made by this exhibit that the income of feed would have been less during prior years than it actually was under the spreads that

obtained in those years if the present spread were applied (T. 2770).

[fol. 1910] Mr. John J. Melkowski, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

Income for Rate-making Purposes

I testified in the prior proceeding and have the same employment I had then, with the exception that I am now assistant secretary and cashier (T. 2779). I was made assistant secretary in February, 1932. I have charge of the cash records, collection of yardage, feed and freight unloading and loading, and all other accounts that may be due the company, make deposits, check disbursement vouchers, make transfers of stock certificates, keep the stock register, make the bills for loading and unloading charges, make up the official monthly statement of receipts and shipments of livestock, and other minor duties.

Decline in Receipts

Respondent keeps a record of the receipts of livestock by species for the various years. I prepared Respondent's Exhibit No. 151 (T. 2780) from these records. Respondent's Exhibit No. 151 is a summary of the receipts of livestock for the years 1927 to 1932, inclusive. It shows the decrease for the year 1932 by species from the six year average, 1927 to 1932, inclusive, to be as follows: Cattle, 107,160 head and $29,716.53 in yardage received; calves, 11,121 head and $2,753.61 in yardage received; hogs, 235,718 head and $22,822.09 in yardage received; sheep, 218,846 head and $12,116.28 in yardage received; horses and mules, 1,274 head and $1.18 in yardage received. The exhibit further shows that for the year 1932 there was a total decrease in all yardage of $67,409.69 from the six year average. The [fol. 1911] number of head includes animals billed through that stop for feed, water and rest, and animals billed direct and offered for sale, but not sold. From these no yardage is obtained, but loading and unloading revenue and revenue from feed is obtained. The yardage received includes

actual initial yardage received and also half yardage (T. 2783).

Decline in Loading and Unloading Revenue

I prepared Respondent's Exhibit No. 152 from the records of the company, which exhibit shows the loading and unloading revenue received by respondent for the six years 1927 to 1932, inclusive. This exhibit shows there was a decrease from the six year average for the year 1932 of $14,886.71 in the unloading charges received and $4,575.08 in the loading charges received, or a total of $19,461.79. The exhibit further shows that the number of cars unloaded for the year 1932 was 15,880 less than the six year average and 4,952 less cars were loaded in 1932 than the six year average (T. 2784 and 2785).

Cross-examination:

In columns 1, 3, 7 and 9 of Respondent's Exhibit No. 151 is shown the number of animals received, including throughs on which no yardage is paid and also livestock which stops to try the market on which no yardage is paid. Columns 2, 4, 6, 8 and 10 show the amount of original yardage collected and also the resale yardage. No feed spread is included and they do not include any income from loading or unloading. The only income respondent receives on through livestock and animals which stop to try the market and go on without being sold is the loading and unloading charge and the feed spread (T. 2787).

[fol. 1912] Mr. Thomas C. Gorman, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

Income for Rate-Making Purposes

Effect of Increase in Truck Receipts on Feed Sales

I reside in St. Joseph, Missouri, and I am a clerk at the St. Joseph Stock Yards where I have been employed about nine years. I attend to all the clerical work con-

nected with truck-in receipts. I am familiar with the methods of operation of respondent, particularly in reference to feeding. My duties have caused me to observe these operations from time to time. I spend about five hours a day out in the yards (T. 2788). I have a chance to see the practices in respect to feeding rail and truck shipments while I am in the yards. I am also familiar with the records that the Stock Yards Company keeps in connection with those operations.

About November 1, Mr. Topping asked me to make a study of feeding operations in the yards, with the view to obtaining a comparison between stock received by rail and the stock received by truck. Our market day closes at noon on Saturday, and November 5 was a Saturday, and, at that time, noon of November 5, and on the following morning, I made a check throughout the yards of the various amounts of feed that might be on any order but not fed by the commission firms, with the view of obtaining the correct amount of feed bought for each week. Each firm has a portion that is allotted to it, and a booth or shack in which feed and equipment are kept. This extra feed that they had on hand at noon on Saturday would be used during the following week, and, therefore, it was part [fol. 1913] of the feed to be considered in this test. That was all done on Saturday, November 5, and Sunday, November 6 (T. 2789). I made a record of all that feed. My study was restricted entirely to feed fed by commission firms. The next thing I did was to obtain the amount of feed ordered on Monday, November 7, by the commission firms. This was taken from the records of the Stock Yards Company, from the original tickets made out when the feed was ordered and supplied. Then, I checked up the total number of head received by rail, checked through the accounts of sales of the different commission firms. I personally saw the men who fed the livestock and found out the exact amount of feed that had been supplied to these rail receipts. This was done each day during the first week of November. On Saturday, November 12, at noon, I went through the same process that I had gone through on the previous Saturday. I checked all the feed that was on hand in the commission booths, deducted this feed on hand from that ordered during the week, leaving the net result the exact amount of feed that had been used in the yards

by all species (T. 2790). The total amount of feed used in the commission area of the stockyards was the amount of feed on hand Saturday, November 5, 1932, plus the amount sold to the commission firms during that week, less the amount actually on hand the following Saturday, November 12, 1932. I followed that same process for a period of eight weeks, immediately succeeding November 5, 1932, the test closing Saturday noon, December 31, 1932. I personally kept all the records. The information as to the amount of feed fed rail shipments was obtained direct from the people that fed those animals (T. 2791). It would have been rather tedious to go through the same processes for getting feed fed to truck receipts, namely, by checking the account of sales as I had done on the rail receipts. There [fol. 1914] were thousands of those account sales, so I got the amount of feed used by truck-in livestock, by taking the net feed used each week, in the manner I have described, and subtracted from that total the amount of feed that was fed to rail receipts for the week, and the amount left should be the amount of feed used by the drive-in receipts for the weekly period. That was true because I gave consideration only to feed ordered by commission merchants, so there would be no other stock in the yards to which to feed that, and I had the total amount of feed used by the rail receipts. The total amount used throughout the whole yards was necessarily the difference between what the rail animals were fed and the total amount of feed, and that must have been fed to truck receipts. There was no other way in which livestock could get into the yards without my knowing it, and if I found that they had slipped in speculator stuff, I could very easily throw that out, but nothing like that occurred during the time of the test (T. 2792). So I knew that the amount of feed fed to livestock in the commission division, less the amount fed to rail receipts, represented the amount actually fed to truck-in receipts. It was not possible that any of the total amount of feed to which I have referred as being sold during any week could have been fed to animals belonging to speculators. I was not considering any of the feed used by spectators and dealers in this test at all. The records of that feed are entirely separate, so I could exclude it. We keep four different records at our feed barns. They are, first, the record of the feed sold and delivered to commission merchants in

the yards; second, the feed delivered to speculators and traders; third, the feed delivered and fed to rail shipments in the St. Joseph yards for feed, water and rest; and, fourth, the feed used by ourselves in our stables [fol. 1915] throughout the yard for our orders. I had available these four records (T. 2793). In this feed survey, the only record I considered was the feed that was delivered to commission merchants. I have summarized my entire study in Respondent's Exhibit No. 153 (T. 2794). The reason that the exhibit shows that the study began on November 7, while I stated it actually began on November 5, is due to the fact that after the market closes on Saturday noon what transpires from then on is considered as a part of the next market day's business, which would be Monday, November 7. I have the work sheets and the supporting data from which Respondent's Exhibit No. 153 was made.

Witness then proceeded to explain the data shown on Respondent's Exhibit No. 153 (T. 2795 to 2806). Summarized this exhibit shows: Prairie hay fed to cattle and calves, 823.3 pounds per 100 head rail receipts and 354.3 pounds per 100 head truck receipts; alfalfa hay, 45.3 pounds per 100 head rail receipts and 87.6 pounds per 100 head truck receipts; total hay, 868.6 pounds per 100 head rail receipts, and 441.9 pounds per 100 head truck receipts; corn fed to hogs, 7.84 bushels per 100 head rail receipts and 3.01 bushels per 100 head truck receipts; hay fed to sheep, 1.6 pounds of prairie hay per 100 head rail receipts and 1.3 pounds per 100 head truck receipts; 36.1 pounds of alfalfa hay per 100 head rail receipts and 11.7 pounds per 100 head truck receipts; 37.7 pounds of total hay fed per 100 head rail receipts and 13 pounds per 100 head truck receipts. As a general proposition this exhibit indicates that rail receipts consume more feed per head than do truck receipts. The reason for that, not only from my study but the chance I have had to observe during my time in the yards, is because of the method of transportation, and the element of time during which the stock is in [fol. 1916] the yards. Stock arriving by rail is confined during shipment for a longer period than stock arriving by truck. They are in the yards for a longer period. The time during which they are in transportation affects their shrink materially, and that the commission merchant usu-

ally endeavors to replace before the stock is sold. So, there being less traveling to truck-in receipts, they would necessarily take a smaller fill. I heard the testimony of Mr. Black in that respect, and it conforms to my knowledge (T. 2801).

I prepared Respondent's Exhibit No. 154, the figures are obtained from different sources. Those figures that have reference to feed per hundred head have been taken from the test or survey that I made for the period of eight weeks, from November 7 to December 31, which is now Respondent's Exhibit No. 153. The figures of receipts were taken from the records of the St. Joseph Stock Yards Company. The figures as to percentages received by rail and by truck for the year 1932, were taken from the records of the Stock Yards Company. The figures showing the percentages of receipts by rail and by truck for all years prior to 1932 were taken from a bulletin issued by the Bureau of Agricultural Economics of the United States Department of Agriculture, entitled: "Drive-in receipts of livestock, 1931, compiled by the statistical section, livestock meats and wool division." This is dated February, 1932 (T. 2802). Sheet 1 of this exhibit refers to the year 1927. I have taken the total receipts of cattle and calves for the years 1932 and 1927, and the percentages of receipts by rail and by truck for those two years. The figures on hay fed in 1932 per hundred head are taken from my feed survey, which is Respondent's Exhibit No. 153. The difference between the prairie hay fed to truck receipts and the prairie hay fed to rail receipts amounts to 469 pounds [fol. 1917] per hundred head less. The figures on alfalfa hay are taken from the same survey and show a gain in alfalfa hay fed to truck-in receipts. This gain amounts to 42.3 pounds per head. The percentage of truck receipts for 1932 over 1927 is 43.67 per cent which represents 279,763 head of cattle and calves that would have come in by truck in 1927 had the same conditions of transportation existed. I have multiplied this figure of 279,736 head, first by 469 pounds loss on prairie hay, and, second, by the 42.3 pounds gain in alfalfa hay. These two results are then multiplied by the respective spreads (T. 2803) existing in 1927 in the sale of both alfalfa and prairie hay. The re-

sults are shown in one instance as a loss in prairie hay, and as a gain in alfalfa hay. The net figure showing the net loss of $8,460.89 is merely the result of subtracting the gain from the loss. The spread figures are shown in the upper right hand corner of the exhibit, and were taken by me from the respondent's books showing purchases of feed and sales to commission merchants at tariff rates in 1927. I heard the testimony of Mr. Black as to why truck receipts eat more alfalfa hay than rail receipts. Mr. Black in his testimony said that it was due largely to the greater percentage of native cattle arriving by truck which would bring up the amount of alfalfa hay fed to those truck receipts (T. 2804). Besides this, there is another element that enters into it that for a short feed in order to put on a greater fill, alfalfa is a very good feed for that purpose, it is a sweet feed, and animals take on quite a bit of water and for a short period it is just about one of the best methods of putting on fill. Relatively, alfalfa hay is not fed in anywhere near the quantity per head that prairie hay is fed. The figures for the net loss in sale of feed for the year 1927 as to hogs and sheep were calculated in exactly the same manner as I described the calculation for cattle [fol. 1918] and calves. At the bottom of the page I have shown the loss in feed revenue due to transition to trucks. The total at the bottom of page 1 of Respondent's Exhibit No. 154 of $33,185.64 represents the estimated gross loss in feed revenue had the same conditions of transportation existed in 1927 that did exist in 1932. If the receipts in the year 1927 had come in in the present ratio of truck to rail, based upon my feed study, respondent would have received $33,185.64 less in net income (T. 2805). Sheets 2, 3, 4 and 5 are prepared exactly as sheet 1, the only difference being that they cover succeeding years. They show an estimated gross loss in feed revenue due to transition to trucks: 1928, $32,412.35; 1929, $25,694.00; 1930, $15,596.91; 1931, $6,246.19.

I made a test of the difference in feeding over a four-week period for the month of November, 1928. The Stock Yards Company's record would show only the total amount of feed used during that period. The records I used in this 1928 survey were the accounts of sales of the commission merchants at the yards. I was only able to obtain the records of 18 firms out of a total of 28 firms (T. 2806). The

18 included the firms doing a large business and the average firms: I would say it would represent the average of them all. It included some of the largest and most prominent. The commission merchants keep a separate record of the amount of feed fed to rail receipts and truck-in receipts. Based upon my 1928 study, I found that rail receipts were fed 516.2 pounds of prairie hay more per 100 head than truck receipts were fed. That figure may be compared with the figure on the left hand side of sheet 1 of Respondent's Exhibit No. 154, entitled: "Loss by pounds in prairie hay fed due to transition from rail to truck per hundred head, 469 pounds." In alfalfa hay I found that 100 head of cat-[fol. 1919] tle and calves received by rail were fed 85.7 pounds of alfalfa more than truck receipts of cattle and calves. That figure is comparable to the figure on sheet 1 of Respondent's Exhibit No. 154, directly under the item of prairie hay mentioned, titled "Gain by Pounds in Alfalfa Fed Due to Transition from Rail to Trucks Per Hundred Head, 42.3 pounds." I found in November, 1928, that 100 head of hogs received by rail were fed 5.99 bushels of corn more than 100 head of hogs received by truck. That may be compared to the figure in the second division of the left hand side of the sheet No. 1, entitled: "Loss by Bushels, in Corn Fed, Due to Transition from Rail to Trucks Per Hundred Head, amounting to 4.83 bushels." I found that sheep received by rail were fed 1.1 pounds of prairie hay more than 100 head of truck receipts (T. 2808). That compares with the figure on the left hand side of sheet 1 under the third division, titled "Sheep," and further titled "Loss by Pounds in Prairie Hay Fed, Due to Transition from Rails to Trucks per hundred head, .3 pounds." In 1928, I found that 100 head of sheep received by rail were fed .4 pounds more than 100 head of receipts received by truck. Had I used these 1928 figures, instead of the figures resulting from my recent feed study, the estimated gross loss in feed revenue would have been considerably greater than the figure arrived at by reason of the 1932 study (T. 2809).

In 1932, our percentage of cattle received by rail was 49 per cent. The percentage by truck was 51 per cent. For calves, the rail receipts were 21 per cent of the total receipts and the truck receipts were 79 per cent of the total receipts. There is a figure that Mr. Christensen has in

Government Exhibit No. 108 of all species. I figured out that percentage also, which is 45 per cent of all species came [fol. 1920] in by rail in 1932, and 55 per cent of all receipts came in by truck in 1932 (T. 2810).

Cross-examination:

The cause for the loss of feed revenue on truck-in livestock being greater in 1928 than in 1932 is that prior to these last two year truck receipts were not given any great amount of regard in the yards. They were handled as part of the receipts, but there was no great effort on the part of commission men to bid for that class of trade, nor to give it the same degree of care that should be given to rail shipments. As to whether in 1932 these receipts tended to come from greater distances with greater shrink and, therefore, consumed more feed that is partly true, but I still want to say that the commission man formerly did not look upon his truck receipts as the major part of his business. They were an item that he considered cost him more in service than the sale of rail receipts. The custom was and is yet to sell those animals as quickly as they arrived. Formerly, they came in in lots of one and two head, and were sold quickly, and they still (T. 2811) are, and he did not bother about feeding them. Truck receipts do consume more feed now than they did formerly. More attention is being given to that by everyone connected with the livestock industry now-a-days. They have all found that this is a method of transportation that is here to stay, and they have to figure on a greater percentage of their receipts coming in by truck at present, and, from all indications, in the future. With respect to Respondent's Exhibit No. 154, the percentages of receipts to the feed-lots are figured on the basis of 1932 conditions and the exhibit undertakes to show what the arrivals by rail and truck respectively would have been in each of the years 1927 to 1931 if the same ratio of rail and truck had been maintained [fol. 1921] in those years as was maintained in 1932 (T. 2812). After finding the percentage of receipts that would have come in by truck in prior years had the same conditions existed, reducing that percentage to head of receipts for that year, and we have arrived at these figures showing the loss or gain, by reason of the difference in feed to the two classes of receipts (T. 2813). I could have ascertained

the loss per one hundred head but I did not do so. I figured it out on the basis of the total percentage of receipts. The amount of $9,250.22 is the value of 1,312,088 pounds of prairie hay at 70½ cents per cwt., and represents the loss which would have been occasioned in the sale of prairie hay in 1927 if the rail and truck-in receipts had come in in the same ratio as they came in in 1932. In making this computation I used the feed charges in effect in 1927 (T. 2814), and in determining a similar figure for 1928 I used the feed charges in effect in 1928. The same is true for each year shown on the exhibit (T. 2815).

ROBERT G. SYMON, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

Traders and Speculators

I live in St. Joseph, Mo., and am in the livestock order buying business at the St. Joseph Stock Yards and have been for 12 years, operating under the style of Corrigan & Symon, a partnership. I am the resident partner, having personal charge of the business conducted in St. Joseph (T. 2869). The statement on Government Exhibit No. 108 that my firm, trading firm No. 1, purchased 122,918 hogs in the first nine months of 1932, and 44,304 for the last three months of 1932, is not a correct statement of my actual purchases at the St. Joseph market for the year 1932. I [fol. 1922] only purchased 166,242 hogs. The bulk of these hogs were shipped on orders and the balance were sold in the St. Joseph Stock Yards. We resold and reweighed 16,546 hogs at the St. Joseph Stock Yards and paid the reyardage or half yardage charge applicable to resales on the market (T. 2870). 1,356 of these hogs were shipped to other markets for sale; that left a balance of 148,340 hogs and they were all shipped on orders. I am registered with the Secretary of Agriculture as an order buyer and publish with the Secretary charges covering my services as an order buyer. In respect to each and every one of the hogs covered by this 148,340 which I shipped on order I charged the published charge for my services as an order buyer. These hogs that were shipped out to apply on orders were

reweighed. We had to have the weight in order to know the amount of money that our customers would have to pay us. Our customer has to have that weight and we have no other way of arriving at it (T. 2871). These hogs were just weighed to a number. When these hogs are reweighed they are reweighed from Corrigan to a number, the number being a packer to whom they are going. I do not believe our practice as an order buyer is any different than the usual practice of order buyers. At the time we buy the hogs we have to sort them. We have an order for these hogs at a certain price and when we get our hogs sorted up we try to charge the packer who gave us the order as near to what these hogs cost as possible. However, it is very hard to figure what these hogs actually cost because of buying so many hogs of different weight and quality (T. 2872). The bulk of the time our orders are for one or more double-deck cars of a specified weight. It is not possible for me to go out on the St. Joseph Stock Yards and buy the identical carloads specified in the order. It is [fol. 1923] necessary for us to buy hogs containing as many of those particular weights and qualities as possible and then take off what we can use on the order. Assuming in our buying a certain number of hogs that there are hogs of various grades in that particular purchase, we pay a number of various prices depending on the grade and weights. If we buy 1000 hogs, we probably pay more than half a dozen specified prices. In buying them we do not average the price. It would be impossible to do that (T. 2873). When it comes time to allocate the particular hogs we have purchased to the orders it is possible with fair accuracy to ascertain the exact cost of these hogs. That is the price that we use in charging our principal plus our commission as an order buyer. That is the general practice at all markets, I believe. Ofttimes in our purchases of hogs we get certain animals which we are compelled to buy with other animals and which do not apply to any orders that we have. We resell them on the St. Joseph market or if they are applicable to any other orders we put them on another order. If they are not applicable we sell them on the St. Joseph market and pay the reyardage charge. That has been our practice. These 148,340 hogs which we shipped on orders in the year 1932 were not resold on the St. Joseph market (T. 2874).

Cross-examination:

I am a hog buyer for Corrigan & Symon. It is the practice of Corrigan & Symon and other order buyers on this and other markets when they go out into the yards they have certain orders to be filled. We anticipate certain other orders. We buy hogs as nearly as we can to conform to the requirements of those orders but are not able to find carloads for sale which can be bought to ship right out so that they will fill our orders satisfactorily. We find in the [fol. 1924] carloads that we do buy some hogs that will fit the requirements of one or more of our requirements and other hogs that will not fit these requirements (T. 2875). Therefore, all the hogs that we buy are weighed to Corrigan & Symon and we take title to them. Then we sort out of the general mass of hogs that we have bought the carloads to fit our various orders and the hogs that do not fit with any order we either sell on the St. Joseph market or ship to some other market to be sold. As far as I know that is the practice of all the other order buyers.

We charge our published commission on all the hogs which we ship to fill orders even though the hogs were weighed to Corrigan & Symon and were sorted out of the mass that we had purchased. There are very few times when we are able to buy a carload of hogs that conform to an order so that they can be shipped out without sorting. There are times, however, that this can be done and in those instances we charge the regular published commission (T. 2876). There is no difference in the charging of commission between whether we find a car of hogs that can be shipped right on or whether we have to sort out of several cars. When we find a carload of hogs that exactly fit the order they are weighed to Corrigan & Symon in all instances (T. 2877).

[fol. 1925] Rebuttal Evidence of Government

MR. HERMAN C. HENRICI, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

Direct examination:

Land Values

Cost of Filling Land

Government Exhibit No. 129 was prepared by me and is an estimate of the cost per cubic yard shown in detail of the dirt necessary to fill the area of the stockyards. I heard the testimony of Mr. Kosters and Mr. Leslie relative to the stockyards areas which were filled and the cost of so doing. This exhibit undertakes to show the cost of filling these same areas (T. 2816) in the same depths. I used the unit price based on the same approximate quantity that was testified to by Mr. Leslie and Mr. Kosters. As to how this exhibit was made up and the source of information from which the cost was calculated, a certain capacity of shovel was estimated, the cost of the shovel was determined from a manufacturer who handles shovels. The cost of trucks was determined from manufacturers who sell trucks. The number of trucks was assumed. The cost of operating, that is, the general experience in connection with maintenance, gas, oil, grease, was taken from the manual of the Associated General Contractors of America, a handbook used generally by contractors all over the country and made up by the Association of General Contractors of the United States. The labor was based on present wages or the scale that was in effect August 1, 1932, and the amount of actual working time was estimated, already shown in another Gov-
[fol. 1926] ernment exhibit, from (T. 2817) the meteorological data given by the Weather Bureau. Taking these things into consideration, the cost per cubic yard was estimated at $.528. The reason that I assumed 8 trucks was that for the distance the material had to be hauled, the idle time necessary, the size of the shovel which we estimated, it appeared that eight trucks would be about the right number to handle this amount of dirt in the length of time specified. That is, 8 trucks would be the most economical number to use on the job.

Government Exhibit No. 130 is the estimate of material and equipment and labor necessary to fill the stockyards area that was estimated necessary (T. 2818) to be filled. It is based on two estimates, one of 100,000 cubic yards, and another of 200,000 cubic yards, depending on the necessary fill, and it is reduced to cost per cubic yard, namely, $.265 for 200,000 cubic yards, and $.33 per cubic yard for 100,000 cubic yards (T. 2819). This estimate, as outlined in Government Exhibit No. 130, contemplates the filling of the areas described by Mr. Kosters, Mr. Leslie and Mr. Churchill in their testimony. As to the sources of information upon which the exhibit was based, the Victor Phillips Company gave us the price on the pumping equipment which includes the pump and the pipe and fittings, hoists, block tackles and cable, priming pump, and the necessary steel guide cables and ropes. We got the estimate on the barges, on the steel barge and the steel pontoons from the Standard Steel Works, North Kansas City. We got the estimate of the motor from the General Electric Company; the estimate of the necessary wire from the Graybar Electric Company. We figured on setting up the plant in Kansas City and transporting, that is, transporting it by the river up to St. Joe, installing it here, and the necessary cost to transport the equipment back to Kansas City again. [fol. 1927] The labor is based on the labor wages that were current August 1, 1932, the current cost is based on the cost of current at Kansas City. We did not have the schedule of rates in St. Joseph, but used a comparatively high rate for current in Kansas City, thinking that would be ample to provide for the current in St. Joseph. We estimated, taking all things, the overhead, the major repairs (T. 2820) the oil, were taken from the Associated General Contractors, and the time estimated for the work was 5 months for the 200,000 cubic yards, and 2½ months for the 100,000 cubic yards. The Victor Phillips Company is engaged in the machinery business selling machinery of the types and kinds listed under equipment required on page 1 of this exhibit. The Standard Steel Works manufacture steel barges and steel pontoons of the kind we have listed on page 2 of the exhibit. The Graybar Electric Company manufactures and sells electric supplies (T. 2821) and jobs cables of the type I have listed on page 2 of the exhibit. They also sell them.

Cost of Laying Railroad Track

Government Exhibit No. 131 was compiled by my employees under my direct supervision. It is a compilation to determine the cost of laying railroad track, including one main line switch. I heard the testimony of Mr. Kosters relative to the cost of railroad track adjacent to the St. Joseph public elevator and Larabee Mills tracts as shown on supplemental map No. 3 in Government Exhibit No. 128. The estimate contained in Government Exhibit No. 131 is an estimate of the cost of laying a similar track (T. 2822) at the same location. As to the sources of information for this estimate and the manner in which it was compiled, we have current quotations on track materials; that is, on rails [fol. 1928] and angle bars, bolts, spikes. We got from Dierks and Company the price of creosoted ties. We got from Ryerson the cost of the turn-out switch points and guide rails, frogs and so on. We used the labor wage that was current August 1, 1932, and upon that basis made up this estimate which includes a mile of track, two rails, and one turn-out, totaling $3.78 per lineal foot of track. Dierks & Sons are people who furnished quotations on lumber for St. Joseph and are located in Kansas City. They handle treated ties. Ryerson is engaged in the business of supplying railroad materials and supplies, such as rails, turnouts, switches and all that kind of thing (T. 2823). They are located at Chicago, Illinois.

Land Values

Relation of Cost of Fill to Value of Land

As to whether there has come to my attention any actual occurrences in which the cost of filling lands may exceed [fol. 1929] the value of the lands when filled (T. 2825), I could not answer directly for the reason that I know lands have remained vacant for a considerable period of time which were required to be filled in order to sell and the value of the land had not reached the point where they could afford to fill them. The problem of filling land to bring it up to grade presents an analogous situation to cutting land down to bring it down to grade from an economical standpoint (T. 2827). I have had experience estimating the cost of excavating land down to a certain grade to determine whether the value of the land after it was excavated

would justify the cost of excavation. That experience occurred across from the Union Depot in Kansas City; for what they call the Sign Board Hill, most generally called that. It consists of two ledges of rock and clay and shale. The land can be bought for the amount of the taxes, but we estimated, at one time, in thinking,—in 1920 or 1922, somewhere around there,—that that land could be economically cut down to grade, but the cost of cutting the land down to grade was greater than the price we figured that the land could be sold for. As to the steps I proposed to take in this excavation in order to reduce costs, there was enough shale there that we figured could be made into brick, and it was contemplated installing a brick plant. There was some rock, which we figured we could put in the crusher and use the rock to some extent, and the dirt we figured we could get rid of most economically by handling it on flat cars which were within a short distance of there in the Terminal Railway Company, and could be reached by an open driveway. This land has remained unimproved to this day (T. 2829).

[fol. 1930] Cross-examination:

Cost of Filling Land

I never did any excavating in St. Joseph. The figures contained in Government Exhibit No. 129 were not obtained from parties who are in the excavating business in St. Joseph. I did not consult any such parties in connection with the preparation of any of the data represented in Government Exhibit No. 129, except that I think I have already testified that the scale of wages was obtained from the unions in St. Joseph. According to my figures, I would put in this fill at the rate of 12,288 cubic yards per month and it would take the number of months determined by dividing that figure into the total amount of fill. My computation in Government Exhibit No. 129 does not take into consideration any cost which would be incidental to increasing the construction period by that number of months. We have estimated the land would be ready before construction started (T. 2830). Anything such as interest and taxes on land during the course of this fill is not taken into consideration (T. 2831). The figures I took from the Manual of the Associated General Contractors of America in-

clude depreciation on the truck and the purchase of a new truck when it is necessary to replace it. I had nothing to do with the preparing of that Manual. I do not know what operating conditions that Manual took into consideration except what the Manual says. I do not know how much grade I would have to go up to get up King Hill. I have not even been there (T. 2832). It would increase the cost, of course, going up a steep hill. The extent of that increase would depend upon the character and grade of the hill. I have never been on King Hill.

We have done some excavating by hydraulic methods, [fol. 1931] but no filling. Personally, I have never pumped any material of any sort out of the Missouri River to be used for fill. As engineers, we were interested in the Consumers Sand Company which pumped sand out of the river for commercial purposes. We were engineers for that company. They represent about 35 companies up and down the Kaw River and the Missouri River and they have a number of plants where they pumped sand and we were engineers for that company (T. 2834) for a period of about a year and a half or two years in 1923. I was personally connected with that engineering work. My work was connected with any problems that had to do with the location and assembling of plants. In other words, the first thing we had appraised all their plants, some 65 plants at that time. Some of the plants were not taken into the consolidation. It was a consolidation of a lot of sand plants which resulted in the Consumers Sand Company with headquarters in Kansas City. To start with, my work consisted chiefly of the appraisal of their properties. We had operating data which they had accumulated from time to time and we took part in the redesign of some of their plants. We now have that data in Kansas City. It was turned over to us in connection with out work (T. 2835). Their plants are on the Kaw River. They did have a plant on the Missouri River at Kansas City under the name of the Stewart Sand Company, I think it was, then. I am positive of it. I am just as positive of that as I am of these various other statements and costs I have set forth in Government Exhibit- Nos. 129 to 131, inclusive. I am positive they had a plant on the Missouri River. I am not sure under what name they operated. They changed names a number of times. It was the Peck-Thompson, and then

the Thompson Sand Company, and the Stewart Sand Company, and some of those plants were taken in on the [fol. 1932] consolidation. I am not positive it was the Stewart Sand Company (T. 2836). Having data in my office concerning the operations of the Consumers Sand Company was not all I had to do with the operations of that company. We acted as consulting engineers during the time of the consolidation. We were consulted in reference to the location of their plants and how they were to be built. We had various problems of various plants. One was at Topeka. I do not recall where that plant was built. I have the information at Kansas City. It was built on the bank of the river. Some of their plants were not on the river. Some plants were on the lake. There were some plants we had to investigate that were down in Oklahoma (T. 2837). There was one plant on a lake. That plant was in existence when I began my investigation. It was partly my duty to appraise it and partly to advise in connection with its reconstruction. I think they finally abandoned it. We discussed various features of its reconstruction and I advised them how to reconstruct that plant. There were economic problems involved besides the reconstruction of that plant and they did not reconstruct it. That plant was built out in a lake (T. 2838). There was one plant located on a boat near Kansas City and they pumped from the boat to the bank of the river. We investigated that plant, including its operating characteristics, and discussed the disposition of the plant. I did not recommend that it be reconstructed. As I recall, the operation of the plant was very economical and at that time it was operated by Jackson Walker Cole Company, and we decided to leave that plant just as it was. After looking it over, I found that it was all right as it was. The figures I have set forth in Government Exhibit No. 130 are partly based upon the experience just detailed as being appraisal and consulting engineer for the Consumers Sand [fol. 1933] Company. Of course, I cannot specifically state (T. 2839) from what experience these figures are obtained, but they are based on my general experience and knowledge of engineering. The material included on page one of the exhibit under "Equipment Required" fits in with my experience with the Consumers Sand Company. I mean that from my experience that that material would be suitable for operation on the Kaw River, it would be suitable for opera-

tion on the Missouri River. If that is not a fact, of course, my computation would be in error. Any equipment that would be suitable for use on the Kaw River would likewise be suitable for use on the Missouri River. I know the Standard Steel Works of North Kansas City have built steel barges of the type listed in the first line (T. 2840) for the general trade. I do not know of any specific barges, but I know they have built a number of barges and pontoons. Their representative said they had. I didn't ask him for any instances. We did none of the buying for the Consumers Sand Company. They had their own purchasing agent, so we did not recommend where they bought any of their equipment. We had nothing to do with the buying at all (T. 2841). We did not recommend the people from whom they bought. That was up to the purchasing agent. This steel barge would be a dredge boat. I based my opinion that a steel barge of that type and cost would be sufficient to carry the dredging material upon the boats I have seen and boats that can now be seen on the Missouri River at Kansas City. Most of the pumping equipment existing on the Missouri River at the present time is larger than this. It is in excess of 12-inch equipment. Woods Brothers have some equipment and the Government has some equipment. The Government equipment would not be available to private individuals. Woods Brothers at Lincoln, Nebraska, have [fol. 1934] equipment which is available (T. 2842). It is now at Kansas City. It is larger than 12 inch. I do not recall the exact size. I have no idea what that equipment of Woods Brothers cost. I might say that after I finished this exhibit I gave a copy of it to Lee Metcalf, the engineer of Woods Brothers, to check over, and he checked it and said the estimate was correct (T. 2843). In preparing Government Exhibit No. 130 I assumed that the pumping dredge would be out in the river. I did not assume any particular place. I allowed sufficient pontoons and pipe to take it well out in the river. The route I chose was following north of the storage and warehouse company, and coming into the property from that direction. As to whether I contemplated coming entirely over land of respondent, I cannot answer that question very well without looking at a map (T. 2846). I have made no allowance for right-of-way over private lands. Whether we could come over land of respondent or not, I would have to look at a map in order to

answer that question. When we made our computation, we looked at a map. I don't remember what our conclusion was as to whether we could come over the land of respondent without crossing land of anyone else, but I made no allowance for right-of-way over any other person's land (T. 2847). From my experience there might be leakage or blowouts in pipe lines of this sort pumping water and sand. The damage to the property of others would be very slight, but there might be some disturbance. I have made no computation that included that element. I estimated that the pipe would have to be 40 feet above the river. I had in mind the elevation of the river at the point where we would do the pumping (T. 2848). I can't give that elevation now, except that we concluded that 40 feet *feet* from the level of the land to the level of the river would be sufficient. We concluded that the land was 40 feet higher than the level of the [fol. 1935] river (T. 2849). I figured that the 40 feet would be the maximum elevation between the river and the pipe line. We estimated that the pipe would have different grades. In other words, where you are crossing under the railroad track, you would have to have sags in the pipe. I estimated that it would go under the railroad track. As to where the elements of cost for the excavation under the railroad track are included, we figured $5,000 to put in the pipe line, move the boat, move the dredge, set it up, and install the pipe. I cannot answer as to how many times we would go under the railroad track without looking at the map (T. 2850), and I made no estimate of what respondent would have to pay to the owners of the railroad tracks for the right to go under that track. I have not taken into consideration that these railroads would refuse entirely to permit the excavation under their railroad tracks for a pipe line of this sort. Some other provision would have to be made. If the railroads refused permission, it couldn't be done the way I have outlined in my estimate, which is Government Exhibit No. 130. There would have to be some increase in cost there due to elevating the pipe, if it was necessary. If the railroads refused to let me go under or over the track and the Stock Yards Company had no right-of-way which was available, it would have to be done some other way.

I estimated there would be 20 per cent of solids in the material that would be pumped, and the balance would be water (T. 2851). We would drain off the water through

the ditches that were already there. We would build dikes, and have included in the estimate on page 5, Item 11, ditching and diking, $1,500. We estimated a dike at least two feet high. That is the average height of the dike above the finished excavation of the ground. The length would be the length of the land that we are filling. I can't give you in [fol. 1936] detail the length of the dike we had in mind in making the estimate of $1,500 (T. 2852). Of course, the cost of making the dike would depend upon the length of it. In making my estimate, I considered that all the other property surrounding respondent's property, such as the packing houses, railroad tracks, and all other land and property thereon not owned by respondent would be the same as it is now. The ditching included in the estimate of $1,500 would be the small ditching necessary to carry this water away. It would be incidental to the fill of the land. I do not have the detail now of the cost per foot of length of dike. I do not know that cost. The cost per lineal foot is important to get at the cost of the whole dike and also the length of the dike is important (T. 2853). I do not now know either of those. I have not that detail.

In connection with page one, I said that the experience with the Consumers Sand Company was brought into use as a foundation for this information. I did not say that I relied on it entirely. That was the only direct experience I ever had in operations of this sort. Any items in this exhibit that reflect my personal knowledge as obtained from direct experience would have to be derived from that experience. I did not consult any practical operators at St. Joseph, Missouri, in connection with the preparation of Government Exhibit No. 130 (T. 2854).

Cost of Laying Railroad Tracks

Government Exhibit No. 131 is merely a hypothetical case of laying track. I am not contending that the figures shown represent the actual cost of anyone in St. Joseph for laying a mile or more of track (T. 2833). I never laid any [fol. 1937] track in St. Joseph and do not know what it cost anyone in St. Joseph to lay a mile of track.

Relation of Cost of Fill to Value of Land

Sign Board Hill in Kansas City runs to a peak of about 50 feet (T. 2854). It tapers down to about 10 or 15 feet.

That contains two levels of rock and a level of shale, which is a more or less rocky formation.

Redirect examination:

With respect to the operations considered in the Contractors Manual, the manual states in considerable detail the basis upon which the figures have been made up of costs, taking the usual construction hazards into consideration, not the unusual. It takes into consideration all the factors usually met with in construction work. I do not know anything as to the necessity of climbing a steep hill in connection with the filling of the stockyard property by excavation and hauling (T. 2856). In excavating and filling where you are taking earth from a hill, you do not have to go on top of the hill to do the excavating. The excavating is usually done at grade, that is, the street or road grade.

In connection with the estimate of hydraulic filling, the [fol. 1938] men with whom I consulted were in Kansas City. Those men operate hydraulic dredges all over the country. In connection with the excavation of Sign Board Hill, we found that by selling the rock we would decrease the cost of excavation (T. 2857). The price we would derive from the sale of the rock would decrease the cost of excavating the rock, but did not more than pay for removing it. The cost of excavating the rock would be slightly more than the rock would sell for. With reference to the shale, we estimated installing a brick plant and selling the brick and the cost of the shale would be equal to the cost of dirt excavation. The fact is that the total cost of the operation didn't warrant our doing it (T. 2858).

At this point the following Governments exhibits were received in evidence:

Government Exhibit No. 132, certain pages from the Annual Report of the St. Joseph Belt Railway to the Interstate Commerce Commission for the year 1929.

Government Exhibit No. 133, certain pages from the Annual Report of the St. Joseph Belt Railway to the Interstate Commerce Commission for the year 1930.

Government Exhibit No. 134, certain pages from the Annual Report of the St. Joseph Belt Railway to the Interstate Commerce Commission for the year 1931.

Government Exhibit No. 135, printed book which is entitled "Abstract of Evidence and Brief on behalf of the St. Joseph Belt Railway Company before the Interstate Commerce Commission in Finance Docket No. 3906, Excess Income of St. Joseph Belt Railway Company".

[fol. 1939] **Surrebuttal Testimony of Respondent**

CAPTAIN ROBERT J. STEWART, a witness called by respondent, being first duly sworn, testified as follows:

Direct examination:

Land Values

Cost of Filling Land

I reside in St. Joseph and am President and General Manager of the Pioneer Sand Company which is engaged in the business of dredging sand out of the river and selling the sand. I have had a little over 25 years of continuous experience in dredging the Missouri River. We have pumped sand as much as 10 miles above St. Joseph and as much as five miles below St. Joseph and over the intervening territory. I am personally acquainted with Lee Metcalf referred to by Mr. Henrici this morning (T. 2882). I have [fol. 1940] had contact with him in a business way. In my estimation, Lee Metcalf is not a practical dredger. To my knowledge he does not have any practical experience along the line indicated by the job which was estimated in Government Exhibit No. 130.

I am familiar with conditions existing on the Kaw River in respect to dredging. I have been on that river many times. I have watched dredging operations for days at a time. I have had occasion to personally observe the difference in operations on the Kaw River as compared to operations on the Missouri River (T. 2883). I would not say that dredging operations on the Kaw River are comparable to those on the Missouri River at or about St. Joseph. The operation, the method of procuring sand, in other words, is practically the same, but the condition of the material, I mean it is easily obtained, for the reason, that the stuff that is contained in the Missouri River is harder, and it has more mud and silt and fine sand, that is 9/10 of the bottom of our river, or a greater percentage

than that, and in the Kaw River we don't have that. In the Kaw River, the bed is all sand, and there is very little mud or fine sand, that is hard, it packs, and it is necessary in the Missouri River, it became so, to put a cutter on our dredge boat, that we might cut down through this hard stuff, to get down to the body of the sand, which might lay as much as 8 or 9 or 10 feet below the bottom of the top of the river bed. That is an increased operating difficulty which we encounter on the Missouri River, which is not encountered to that extent on the Kaw River (T. 2884). Another difference is the difference in floating equipment. We have dredging boats, and we have had, since I have been here, and we haven't had a dredge boat of less length than 80 feet, while on the Kaw River they quite frequently [fol. 1941] have dredge boats that will be 35 or 40 feet long. This is occasioned by the flow of the water, a boat of such short dimensions being anchored out in the stream against the flow of the water which will sometimes go up to 7 or 8 miles per hour puts such a strain on the line that it tends to pull the head of the boat down and will cause it to go under, due to the fact that it has not enough bouyancy or length to hold it level or more stable on the water. I noticed in Government Exhibit No. 130 on page two that the size of the dredge boat that would be used for the dredging machinery was 25 x 40 x 3 feet 6 inches. From my experience, that equipment may do it, but I would not want to try it. I would not start out with that equipment, if I had my choice. As a practical operating man on the Missouri River, I would not use equipment of that length. The width is all right, but the depth is not enough (T. 2885). I use a length of 85 feet. I used that length because it is more stable and more secure. I use that length of boat at or about St. Joseph, Missouri. As to whether the current has anything to do with the size of the boat, in the Missouri River we have as much as 7 or 8 miles flow of water where our suction pipe would not go down, and we would have to load it with grate bars or chains that we might give if more weight. In the Kaw River they have a flow of water of perhaps two or three miles an hour. That difference in current occasions greater hazards and greater operating expense. There is a difference in the depth of the two rivers. The Missouri River is supposed to be

navigable (T. 2886) and the Kaw is not. The Kaw River has a depth during the operating season of some 2, 4, or 5 feet, while in the Missouri River we pump sand as much as 40 and 45 feet. That is an increased hazard of operation which would increase expenses (T. 2887). The Missouri River is recognized as more hazardous than the [fol. 1942] Kaw River by the Marine Underwriters. Near and Gibbs of Cincinnati, Ohio, are underwriters of marine insurance and we have made application to them to underwrite or insure our equipment. We gave them some 20 plants on the Kaw and Arkansas Rivers and 6 plants on the Missouri River, giving them our experience over a period of 7 years, and they refused the insurance, due to the Missouri River.

I am acquainted with most of the companies in this part of the country as far east as Pittsburgh, Dubuque, Iowa, St. Louis, and Paducah that construct steel barges or dredge boats of the type that would be required in dredging operations at or about St. Joseph, Missouri. I never heard of the Standard Steel Works of North Kansas City as a builder of barges or dredge boats of that type. We have had several steel pieces built and I have never asked them yet to give us an estimate on the cost of construction because we never knew that they were in that business.

I am very familiar with the Consumers Sand Company (T. 2888). They never had any operations on the Missouri River. I am positive of that.

I heard the testimony of Mr. Henrici this morning and have examined Government Exhibit No. 130. Based upon my knowledge of conditions existing at or about St. Joseph, assuming that all the other adjacent property is exactly as it is now (T. 2889), it would be practical to pump material from the Missouri River direct to the stockyards area in the manner contemplated by Government Exhibit No. 130. By that I mean I would do it if that was necessary, but if they would permit me to use any other method, I would not. I would haul it there. The reason I would haul it rather than pumping it is because the depth of the fill is not sufficient to warrant that kind of an operation. You [fol. 1943] would be continually moving your pipe line (T. 2890) which would mean the ceasing of producing sand during that period. Were you making a fill of some 10

to 30 feet, that would be quite different. You could establish your pipe line and continue to produce, but over such a thin amount, I would not think that would be a practical way of doing it. I would prefer hauling it (T. 2891). If I had the choice of methods, I would use the hauling method.

In respect to the operation contemplated by Government Exhibit No. 130, it would be necessary to take care of the water that would be released from the pipe. As to the effect of that on the practicability of the operation, I believe the expense you would be put to would be to excessive for the amount of the material you would be putting in place. 80 per cent of it would be water at least, and 20 per cent solid. I think it would be a considerable task to take care of 80 per cent of water on a flat surface as that is (T. 2892). Adjacent to the stockyards property there are substantial improvements. That amount of water might be an element of damage to those improvements. Adjacent property owners might seriously object to having their land flooded with water. Depending on the individuals, that might not be a very far stretch of the imagination. Some might object more strenuously than others. I don't know that undermining of railroads adjacent to the place where the land was being filled would be one of the hazards of operation (T. 2893).

I do not know of any adequate private equipment on the Missouri River to handle a job such as is contemplated by Government Exhibit No. 130. I know all the various types of equipment that are on the Missouri River from here to St. Louis.

[fol. 1944] Cross-examination:

The points at which I have observed dredging are Topeka, Lawrence, Turner, and the vicinity of Kansas City, including the Stewart Sand Company, Muncie Sand Company, the American Kansas Bauersock at Lawrence, Kansas, the Kansas Sand Company, the Topeka Sand Company, the Consumers Sand Company, and the River Sand Company. I was not connected with the Stewart Sand Company in Kansas (T. 2894). I know that company very well. I have known their President, Mr. Frank Lauhead, for the past 12 or 14 years and worked with him considerably but not for him. When I say that I have pumped sand in the

Missouri River to a depth of 40 to 45 feet, that does not mean that all the sand is pumped from that depth. That is an extreme. In hydraulic filling I would say that where the filling is 3 to 3½ feet that the sand would flow out on both sides of the pipe a distance of perhaps 12 to 15 feet in leveling off (T. 2895). With reference to the disposition of the water that comes with the sand which would make it too expensive in a fill of the stockyards property, the method of distribution I had in mind excavating a ditch through which to flow the water back. I had in mind the existence of ditches and sewers already in place, but I don't think you could use your sewers to any advantage because there would be a portion of the sand that is pumped out of the river that would be carried with the water, and the sewer is so built that I think this finer stuff when it went through would block it up. I know all the ditches down there, but I have not examined them with the thought in mind as to whether they could be used. I think they could be used by getting to them, and I am not quite sure that they would have to be kept open (T. 2896).

[fol. 1945] Redirect examination:

In addition to the ditch, there would have to be a dike or levee. That would certainly have to go entirely around the area that was being filled because water will seek its own level.

Recross-examination:

A dike is customary in hydraulic filling in a fill of that nature. If the fill is being made in an area lower than surrounding land, you would not need a dike, but where you are filling above surrounding land, it is customary to provide a dike (T. 2897).

Redirect examination:

If you are filling a portion of what is now the stockyards to a depth of approximately 3 feet and bringing it up to the level of the land which is adjacent to it, you would need a dike. In answering the previous question, I construed the meaning to be that if you were pumping into a fill on a hill, with a hill on both sides of you, you would not need

a dike because you have a dike with the hill. That is what I meant by the answer I made (T. 2898).

[fol. 1946] STIPULATION

The foregoing, together with Examiner's Exhibit No. 100, Government Exhibit- Nos. 101 to 143, inclusive, and Respondent's Exhibit- Nos. 100 to 154, inclusive, a portion of which are physically incorporated in this abstract, is a fair and satisfactory abstract of the evidence introduced in the rehearing of the above-entitled proceedings, provided however, that in instances where exhibits have not been physically included in this abstract, they may be referred to by either party in the same manner as though physically incorporated herein. It is understood that in all cases where an objection was made and overruled, that an exception was preserved whether the objection and exception are shown in this abstract.

Seth Thomas, Solicitor, United States Department of Agriculture; J. S. Bohannan, Assistant to the Solicitor, Attorneys for the Government. Ross Dean Rynder, William N. Strack, Attorneys for Respondent.

[fol. 1947] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPROVING NARRATIVE STATEMENT OF EVIDENCE—Filed Sept. 26, 1935

This cause coming on for hearing on the motion of petitioner (appellant) for an order approving the narrative statement of evidence filed herein and certifying original exhibits to the Supreme Court of the United States, and the court being advised in the premises, it is

Ordered:

1. That the narrative statement of evidence filed herein, and which, with the original exhibits offered in evidence and to be certified separately to the Supreme Court of the United States, is a true and complete statement of all the

evidence which is essential to the decision of the questions presented by the appeal, be and it is hereby approved.

2. That the Clerk of this court, in preparing the transcript of the record on the appeal herein to the Supreme Court of the United States, shall certify to said court all of the condensed narrative statement of evidence and the exhibits specified in the stipulation of counsel herein; that said exhibits shall be certified and forwarded by the Clerk of this court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record [fol. 1948] but separately therefrom, and that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as part of the record.

Kimbrough Stone, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

September 26, 1935.

[File endorsement omitted.]

[fol. 1949] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL STIPULATION CONCERNING CONDENSED NARRATIVE STATEMENT OF RECORD AND ORIGINAL EXHIBITS TO BE TRANSMITTED TO THE UNITED STATES SUPREME COURT—Filed Sept. 26, 1935

A stipulation having been entered into, dated September 11, 1935, by and between counsel for petitioner and counsel for the United States of America and the Department of Agriculture, concerning the condensed narrative statement of record and original exhibits to be transmitted to the United States Supreme Court in the above entitled case, said stipulation is now hereby supplemented by adding thereto the following:

It is further stipulated that the Clerk of this court, in preparing the transcript of record on appeal in the above entitled cause to the Supreme Court of the United States,

shall certify to said court, in addition to the original exhibits designated in said stipulation of September 11, 1935, a further original exhibit offered in evidence before this court, being a certified copy of a proceeding known as "United States of America, Before the Secretary of Agriculture, Bureau of Animal Industry, Docket No. 344, Secretary of Agriculture v. Union Stock Yards Company of Omaha, Ltd., Respondent, Proceedings, Findings of Fact [fol. 1950] and Order," entered by the Acting Secretary of Agriculture, R. W. Dunlap, on the 1st day of March, 1933; that said document shall be certified and forwarded by the Clerk of this court to the Supreme Court of the United States as an original exhibit, not as part of the transcript of record but separately therefrom; that any party hereto may refer to said original exhibit in their briefs and oral arguments with like effect as though it were a printed part of the record.

Wendell Berge, Counsel for the United States of America and Secretary of Agriculture. R. E. Culver, Wm. N. Strack, R. D. Rynder, Counsel for Petitioner.

September 18, 1935.

[File endorsement omitted.]

[fol. 1951] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Sept. 26, 1935

To the Clerk of the District Court of the United States for the Western District of Missouri, St. Joseph Division:

Please prepare a transcript of record in the above entitled cause on appeal to the Supreme Court of the United States, including therein the following:

1. Petition herein of St. Joseph Stock Yards Company against United States of America and Secretary of Agriculture, filed May 15, 1934, which should include Exhibit A attached thereto.

2. Answer of the United States of America and the Secretary of Agriculture.

3. Stipulation with respect to narrative statement of evidence and certification of original exhibits to the Supreme Court of the United States, dated September 11, 1935.

4. Supplemental stipulation with respect to narrative statement of evidence and certification of original exhibits to the Supreme Court of the United States, dated September 18, 1935.

5. Narrative statement of evidence.

6. Opinion of the District Court, dated May 1, 1935.

7. Final decree of the District Court, dated May 1, 1935.

8. Order staying final decree of District Court, dated May 9, 1935.

9. Notice of petition for supplemental findings of fact and conclusions of law, dated May 22, 1935.

[fol. 1952] 10. Acknowledgment by Solicitor General of the United States of notice of petition for supplemental findings of fact and conclusions of law, dated May 22, 1935.

11. Petition for supplemental findings of fact and conclusions of law, dated May 24, 1935.

12. Proposed order permitting filing of petition for supplemental findings of fact and conclusions of law but refusing to make said findings, dated May 24, 1935.

13. Letter of Honorable Merrill E. Otis, District Judge, dated June 20, 1935, denying said petition for supplemental findings of fact and conclusions of law.

14. Notice of petition for appeal, dated May 21, 1935.

15. Acknowledgment by Solicitor General of the United States of notice of petition for appeal and of copy of petition for appeal, assignment of errors, order allowing appeal, and order granting supersedeas, dated May 22, 1935.

16. Petition for appeal, dated May 24, 1935.

17. Order allowing appeal, entered May 24, 1935.

18. Order granting supersedeas, entered May 24, 1935.

19. Bond on appeal, approved May 24, 1935.

20. Bond as security on appeal, approved May 24, 1935.

21. Assignment of errors, dated May 24, 1935.

22. Statement as to jurisdiction of United States Supreme Court on appeal, filed May 24, 1935.

23. Notice of appeal pursuant to rule 12, paragraph 2, of the rules of the Supreme Court of the United States, addressed to the Solicitor General of the United States and the Assistant Attorney General of the United States.

24. Acknowledgment of notice of appeal, dated May 27, 1935.

25. Citation on appeal, entered May 24, 1935.

26. Notice of appeal pursuant to rule 12, paragraph 2, of the rules of the Supreme Court of the United States, addressed to the Attorney General of the State of Missouri, and acknowledgment thereof, dated May 29, 1935.

27. Acknowledgment of citation on appeal by Solicitor General of the United States, dated June 7, 1935.

28. Consent to entry of order enlarging time within which to settle the record, dated June 15, 1935.

[fol. 1953] 29. Order enlarging time within which to settle the record, dated June 19, 1935.

30. Consent to order enlarging time within which to settle the record, dated July 11, 1935.

31. Order enlarging time within which to settle the record, dated July 18, 1935.

32. Consent to order enlarging time within which to settle record, dated August 5, 1935.

33. Order enlarging time within which to settle the record, dated August 15, 1935.

34. Consent to order enlarging time within which to settle the record, dated September 6, 1935.

35. Order enlarging time within which to settle the record to October 18, 1935.

36. Notice to the United States and the Department of Agriculture of appearance before court for entry of order approving narrative statement of evidence and original exhibits to be transmitted to the Supreme Court of the United States on this appeal, dated September 18, 1935, and acknowledgment of service thereof.

37. Order approving the narrative statement of evidence and providing for certification of original exhibits to the Supreme Court of the United States, entered September 26, 1935.

38. This præcipe for transcript of record.

R. E. Culver, Wm. N. Strack, R. D. Rynder, Counsel for Petitioner (Appellant.)

Service of the foregoing præcipe and receipt of a copy thereof are hereby admitted and acknowledged upon September 18th, 1935.

Hugh B. Cox, Counsel for United States of America and Secretary of Agriculture.

[File endorsement omitted.]

[fol. 1953a] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO NOTICE OF APPEAL—Filed Oct. 4, 1935

It is hereby stipulated, by and between counsel for the respective parties, that the attached copy of notice of appeal, pursuant to rule 12, paragraph 2, Rules of the Supreme Court of the United States, is a true and correct copy of the notice of appeal herein, which was served upon the Solicitor General of the United States on May 27, 1935, service thereof having been acknowledged by him on said date.

It is further stipulated, by and between counsel for the respective parties, that the court or a judge thereof may enter herein the order, copy of which is hereto attached) respecting inclusion of said notice of appeal in the transcript of record to be certified by the clerk of the United States District Court to the clerk of the Supreme Court of the United States.

Hugh B. Cox, Counsel for the United States of America and the Secretary of Agriculture. Wm. N. Strack, R. D. Rynder, Counsel for Petitioner (Appellant).

September 30, 1935.

[File endorsement omitted.]

[fol. 1953b] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RESPECTING INCLUSION OF NOTICE OF APPEAL IN RECORD—Filed Oct. 4, 1935

It appearing that the notice of appeal herein, pursuant to rule 12, paragraph 2, Rules of the Supreme Court of the

United States, cannot be located in the files of the clerk of the United States District Court, Western District of Missouri, St. Joseph Division, and that said notice of appeal should properly be a part of the transcript of record to be certified to the Supreme Court of the United States in connection with the appeal herein, and that the parties have stipulated that the attached copy of notice of appeal shall be included in the transcript of record to be certified to the Supreme Court of the United States:

It is ordered that, in making up the transcript of record to be certified to the Supreme Court of the United States in the appeal in this case, the clerk of the United States District Court shall include therein this order, the stipulation herein referred to, and the attached notice of appeal.

Merrill E. Otis, United States District Judge.

October 4, 1935.

[File endorsement omitted.]

[fol. 1953c] In United States District Court

[Title omitted]

Notice of Appeal

To Honorable Stanley F. Reed, Solicitor General of the United States, and Honorable Harold M. Stephens, Assistant Attorney General of the United States, Washington, D. C.:

Pursuant to Rule 12, paragraph 2, rules of the Supreme Court of the United States, you are hereby served with copies of the petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction in the above entitled cause.

Your attention is directed to the provisions of Rule 12, paragraph 3, reading as follows:

"Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be

included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3."

William N. Strack, Ross Dean Rynder, Counsel for Appellant (Petitioner).

[fol. 1954] In United States District Court, Western District of Missouri, St. Joseph Division

In Equity. No. 245

St. Joseph Stock Yards Company, Petitioner,

vs.

United States of America and the Secretary of Agriculture, Defendants

Before Stone, Circuit Judge, and Reeves and Otis, District Judges

Memorandum Opinion and Findings of Facts—Filed May 1, 1935

Per Curiam:

In 1929, the Acting Secretary of Agriculture initiated an inquiry into the rates being charged by petitioner for various services at its stockyards at St. Joseph, Missouri. After full hearing, the matter was finally argued and submitted, in May, 1930. In February, 1931, and before decision, petitioner filed an application to reopen the case because of changes in general economic conditions affecting its business. The Secretary denied this application and (July, 1931) entered an order fixing rates. An action to enjoin these rates resulted in determination by this Court that the case should have been reopened (St. Joseph Stock Yards Co. vs. United States, 58 Fed. (2d) 290). Thereafter, the Acting Secretary reopened the case generally and hearing was had from January 10, to February 16, 1933. On January 6, 1934, the Acting Secretary forwarded proposed findings, conclusions and order to petitioner with a statement that exceptions thereto might be filed by Febru-

ary 2, 1934. On February 2nd, petitioner filed exceptions and also filed an application again to reopen the case because of change in conditions since the close of the hearing on February 16, 1933. In May, 1934, the Secretary de- [fol. 1955] nied the application to reopen the case and entered an order fixing rates. This action challenges both the denial of the application to reopen and the order fixing rates.

I

Application to Reopen

Obviously, if the case should be reopened for further evidence before the Secretary, no decision here upon the rate order is in place. Therefore, the propriety of reopening the case will be considered first.

The changes relied upon in the application to reopen as being changes of an unusual character affecting the business of this petitioner are set forth therein and are as follows: (1) effect of the Agricultural Adjustment Act (May 12, 1933, U. S. C. A. Title 7, Sections 601-619); (2) effect of National Industrial Recovery Act (June 16, 1933, U. S. C. A. Title 15, Sections 701-712); (3) effect of action of the President under the Gold Reserve Act (January 30, 1934, U. S. C. A. Title 31, Sections 440-446); (4) showing of actual business experience for calendar year 1933.

(1) The argument as to effect of the Agricultural Adjustment Act is that the announced policy of the Secretary is to reduce the number of hogs which he has power to do under the processing tax powers. That this results in 25 percent per annum reduction hereafter and vitally influences the volume of hogs coming to this market. As to cattle and sheep the contention is that various efforts are being made to include them within the power of similar reduction by the Secretary. Any virtue in this contention must depend upon the relative permanency of the order as to hogs—the matter as to sheep and cattle is entirely speculative. In fact, the permanency of the hog order is purely speculative.

This ground is solely concerned with the volume of business, by that meaning the volume of receipts of livestock at complainant's yards. The Secretary used an estimated volume as a rate factor (page 160). Therein he states the numbers each of cattle, calves, hogs and sheep used in his

[fol. 1956] factor. A comparison of these figures with those of actual receipts (page 157) for the six years, 1927-1932, inclusive, reveals that the Secretary's figures are very conservative. As to hogs, his figure is only 126,010 above the lowest receipt (in 1932) during the above six year period. In view of the above conservatism of the Secretary, it is by no means clear that such estimates are so far wrong as to be influenced materially by the operation of this Act.

Because of the speculative character as to the occurrence or permanency of the suggested action by the Secretary under the Act and because of the conservative estimate of volume of receipts used by the Secretary, we think this ground insufficient to warrant reopening of the case.

(2) The contention as to the National Industrial Recovery Act is that it has resulted in a substantial raise in wages of employes. Also it is alleged that existing labor and economic conditions have had a like effect. The permanency and the extent of these effects are, obviously, uncertain and doubtful.

(3) The effect of the Gold Reserve Act action, both on increase in operating expenses and in an estimated cost of reproduction new less depreciation of complainant's structures seems too speculative to merit consideration.

(4) As to the estimated effect of these rates if applied to 1933 business, the difference between the amount which is claimed would have been earned thereunder and the amount found by the Secretary to constitute the reasonable net return is too small to be taken as a guide for a rate. It is to be expected that any business will have annual fluctuations. Rates are not based upon the result of the business of any one year alone but upon what is estimated as being the average business over a proper term of years, the future being gauged by the past. The past years here taken by which to gauge the future include [fol. 1957] six years, two of which were deeply affected by the depression. The experience before the Secretary was up to ten days before the date of the hearing.

All of the above contentions involve effects upon the business of petitioner which are entirely uncertain and unpredictable with any degree of accuracy. They are being urged in connection with the rates in the order here

challenged. Only actual experience under such rates can furnish any real criterion or guide as to the effects urged. This experience should be obtained by practical test. No sufficient showing appears for not making such test to determine these matters which are of such doubtful and uncertain influence. The case should not be reopened at this time. If actual experience hereafter for a proper period under the rates fixed by the order reveals sufficient reasons, the order can then be challenged through the proper channels.

II

Confiscatory Character of Rate Order

1. Powers of Secretary

Numerous attacks are made upon the power of the Secretary to determine various elements of fact entering into a decision upon the rates. It is unnecessary to discuss separately any of these. The power of Congress to regulate the rates at stockyards through the Packers and Stockyards Act has been sustained (Stafford vs. Wallace, 258 U. S. 495; Tagg Bros. vs. United States, 280 U. S. 420). That Act empowers the Secretary of Agriculture to determine rates. Obviously, such designation carries all powers necessary or proper to execute the authority. Vital to such execution is the investigation and determination of all fact-matters pertinent to rates to be regulated. The contentions here have to do only with such matters.

[fol. 1958] 2. Confiscation

Scope of Review.—At the very threshold is the preliminary question: What is the scope of this review: Is the petitioner entitled to the independent judgment of this court as to the law and the facts upon the record made before the Secretary or is this court bound to accept the findings of fact made by the Secretary if they are supported by substantial evidence?*.

* A third alternative is that where a constitutional issue is involved the reviewing court must accord the petitioner a hearing de novo. In this case, however, there was no request for such a hearing and no additional evidence was offered before this court. The Supreme Court said in

If violation of the Constitution were not charged there would be no doubt but that in the review here inquiry as to facts should go no further than to determine whether the facts found are substantially supported. Tagg Bros. [fol. 1959] vs. United States, 280 U. S. 420, 443, 444. But the debate, whether when the issue of confiscation is raised the court independently should make findings, a debate not yet decided by the Supreme Court as to cases arising under the Packers and Stockyards Act, goes on. The Supreme Court expressly passed the question without decision in the Tagg Bros. case. 280 U. S., l. c. 443.

The question shoult be decided and it should be decided in this case. The court ought not to exceed its jurisdiction and it ought not invade the jurisdiction of an administrative agency. Moreover, it is greatly to be desired that a clear guide should be set up for use in future cases of this character.

The latest decision of this question was by a three judge court for the District of Nebraska. Union Stock Yards Co. v. United States, 9 Fed. Supp. 864. The case was similar to this. The principal issue was that of confiscation. In the

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Tagg Bros. vs. United States, 280 U. S. 420, 443, that—"a proceeding under Section 316 of the Packers and Stockyards Act is a judicial review, not a trial de novo." Compare, however, the opinion of the Supreme Court in Crowell vs. Benson, 285 U. S. 22, in which it was ruled that a hearing de novo rightfully was demanded by the litigant claiming infringement of constitutional rights. But see the dissenting opinion of Brandeis, J., l. c. 65. Crowell vs. Benson was not a case arising under the Packers and Stockyards Act.

The scope of judicial review in a case of this character does, of course, involve other matters than a consideration as to whether the findings made by the administrative agency are supported by substantial evidence. These other matters include inquiry: (1) whether the statutory procedure was followed by the administrative agency; (2) whether the order made is supported by the findings made; (3) whether erroneous rules of law were followed to reach the findings. Tagg Bros. vs. United States, 280 U. S. 420; Interstate Commerce Commission vs. Illinois Central Railroad Co., 215 U. S. 452, 478; Morgan vs. United States, 8 Fed. Supp. 766, 768.

opinion by Circuit Judge Woodrough (Circuit Judge Gardner and District Judge Munger concurring) the court said (l. c. 873): "Our judicial function does not go beyond the decision of the constitutional question whether the rates fixed are confiscatory. *His (the Secretary's findings of fact supported by substantial testimony are not subject to review.*"

[fol. 1960] That the court is required to exercise its independent judgment as to the facts was the view expressed in the opinion of a three judge court in Denver Union Stockyards Company v. United States, 57 Fed. (2d) 735, 739.

In St. Joseph Stockyards Company v. United States, 58 Fed. (2d) 290 the question was not decided but in a footnote to the opinion (l. c. 296) it is said that a majority of the court subscribed to the first and a minority to the second of the two theories stated.

A three judge court in Morgan v. United States, 8 Fed. Supp. 766, stated the two theories (l. c. 769) but did not find it necessary to choose between them.

No other cases have arisen or been decided under the Packers and Stockyards Act.

True it is that the Supreme Court long since ruled that where an order of a rate regulating body, acting under state authority, is challenged as confiscatory, and hence violative of the due process clause of the Fourteenth Amendment, the reviewing federal court must exercise its independent judgment as to facts and law. Ohio Valley Co. v. Ben Avon Borough, 253 U. S. 287.* Upon first thought it might seem

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* When it is said that an independent judgment must be reached by the court, it is meant that the court's findings must be determined by the weight of the evidence and not by a consideration as to whether the findings of the administrative agency are supported by substantial evidence or are arbitrary. A finding may well be supported by substantial evidence and still be against the weight of the evidence. The advocates of each of the two theories, (1), that the court must give its independent judgment on the record made and that, (2), it must accord a de novo hearing, agree that the findings of the administrative agency should be looked upon as presumptively correct. That is far less, however, than an acceptance of the findings of the administrative agency as conclusive if they are supported by substantial evidence or are not arbitrary.

that this decision is determinative of the present question. For the due process clause in the Fifth Amendment is identical in significance with the due process clause in the Fourteenth Amendment. Closer observation, however, reveals an essential distinction between the Ben Avon Borough case and a case where rates are fixed by an administrative agency of the United States whose findings of fact are made conclusive by statute.

Findings of fact made by the Secretary of Agriculture in a proceeding under the Packers and Stockyards Act are made conclusive by statute. By that Act the laws pertaining to orders of the Interstate Commerce Commission are made applicable to orders of the Secretary. Title 7, Sec. [fol. 1961] 217, U. S. C. The Interstate Commerce Act (Title 49, Sec. 16(12)) makes the findings of the Interstate Commerce Commission conclusive if supported by substantial evidence. Tagg Bros. v. United States, 280 U. S. 420, 440 (see footnote on p. 440).

If in a judicial review of an order of the Secretary his findings supported by substantial evidence are conclusive upon the reviewing court in every case where a constitutional issue is not involved, why are they not conclusive when a constitutional issue is involved? Is there anything in the Constitution, which expressly makes findings of fact by a jury of inexperienced laymen, if supported by substantial evidence, conclusive, that prohibits Congress making findings of fact by a highly trained and especially qualified administrative agency likewise conclusive, provided they are supported by substantial evidence?

[fol. 1962] The constitutional provision relied on is that (Art. III, Sec. 1) which provides that—"The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain and establish." The contention is that the phrase "judicial power" includes the exclusive power finally to decide all issues of fact in a case where a constitutional right is claimed to have been violated. But it is not contended that it includes that exclusive power where a constitutional right is not claimed to have been violated. A case of the latter character may be quite as important to the litigant as a case of the former character and may involve as much. No good reason can be given for this distinction. "In respect to the question * * * of the final-

ity to be accorded administrative findings of fact * * * I see no reason for making special exception as to issues of constitutional right, * * *", said Mr. Justice Brandeis (Mr. Justice Stone and Mr. Justice Roberts concurring) in his dissenting opinion in Crowell v. Benson, 285 U. S., 22, 80.

Upon this phase of the case our view coincides with that expressed by the learned justice of the Supreme Court as thus set out and with that of Circuit Judge Woodrough in Union Stockyards v. United States, supra.

We have not overlooked what was said in Crowell v. Benson, 285 U. S. 22, 60, that—

"In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function. The case of confiscation is illustrative, the ultimate conclusion almost invariably depending upon the decisions of questions of fact. This court has held the owner to be entitled to 'a fair opportunity for submitting that issue [fol. 1963] to a judicial tribunal for determination upon its own independent judgment as to both law and facts.'"

But Crowell v. Benson was not a Packers and Stockyards case. In Crowell v. Benson it was ruled the administrative agency whose action was sought to be enjoined was not one whose findings of fact were made conclusive by statute. On the contrary it was expressly ruled that the statute conferring powers on the agency in question did not make his findings conclusive even if supported by substantial evidence. The case, therefore, is to be distinguished from a case in which findings are so made conclusive.

Beyond the above challenges to the power of the Secretary, the attacks upon the rates are aimed at the findings of fact pertinent to determination by the Secretary. There is no essential fact which escapes assault. This order shows careful consideration by the Secretary. Even careful consideration may involve error but it so rarely hives a swarm of errors as to be a fit target for shotgun charges intended to scatter all over it. Nevertheless, heavily burdened courts are compelled to examine every separate matter. The attacks here are upon (A) the rate base value, (B) the rate of return, (C) the experience test period, (D) the op-

erating expenses and (E) a particular finding as to "feed lot yardage" charge.

A. Rate Base Value

The challenges as to the rate base value include (1) the amount of land included, (2) the value of the land included, (3) the exclusion of certain structures, (4) the value of the included structures, (5) the exclusion of "pre-organization expenses" and "cost of financing", (6) the exclusion of "going concern" value; (7) the amount of "depreciation reserve".

[fol. 1964] (1) Amount of Land

The total ownership of land is 16,182,641 square feet (372.414 acres). Of this, 7,925,577 square feet (181.946 acres) is concededly not used and useful. Petitioner claims that all of the balance—8,257,064 square feet (189.556 acres)—is used or useful. Of this balance, the Secretary found 4,410,361 square feet (101.248 acres) used and useful. The dispute is over the difference of 3,846,703 square feet (88.308 acres). The loss in the rate base value by exclusion of this land is claimed to be $356,263.33. All of the land is considered (conveniently) in the evidence under various zones. The disputed land is found in Zones A, B, C, D, F, L, N, 1, 2 and 3.

In presenting this matter, petitioner classifies this disputed land under four headings: (a) the Transit House, (b) expansion land and (c) "a number of minor errors which are each small but total a substantial amount." While plaintiff separately discusses the "Anchor Serum Company plant," the substantial reason urged for its inclusion is for expansion purposes, therefore, it will be included under that heading.

(a) Transit House

This tract is a piece of land having 15,805 square feet occupied by a hotel called the Transit House. This is a commercial hotel patronized principally by shippers to the yard and by drivers of trucks carrying livestock to or from the yards. The contention is that this property should be included in the rate base value because it is a necessary convenience connected with the yards business. While the

yards are some distance from the hotel section of the city proper, there is no sufficient showing of any reason why other hotels and lodging houses could not be used by those having business with the stockyards. It would have to be shown very clearly that the business of the yards would be materially affected by the absence of a near by hotel [fol. 1965] before it could be said that the maintenance of such was so related to the yards business as to make it proper to be included in the rate for yard services. There is no such showing here and the exclusion thereof by the Secretary is sustained.

(b) Expansion Land

This land includes several tracts. The argument is that error exists in excluding the Anchor tract (349,449 sq. ft.); 722,160 sq. ft. in Zone C; 498,152 sq. ft. in Zone D; and 1,921,946 sq. ft. in Zone F.

The matter of including or excluding land or property held for business expansion in the rate base is the matter of who—the rate payers or the company—shall carry property which is not being used to produce the service paid for by the rate. Obviously, it may be proper and good business judgment may sometimes dictate provision for future expansion of the business. It is equally clear that, so far as the present rate payers are concerned, there must be a limit to the extent to which they can be compelled to pay for providing possible future facilities for future business. While a broad power and discretion must be left undisturbed in company management, yet even as to expenditures directly entering into the present service for which the now customer pays, this discretion is not beyond control (West Ohio Gas Co. vs. Public Util. Comm. (case 212), decided Jan. 7, 1935; Western Distributing Co. vs. Comm., 285 U. S. 119, 124, 126). It would seem that such control should be much more extensive where the expenditure has no part whatsoever in furnishing the service paid for. In fact, the general doctrine is that the rate base is made up of values used in furnishing the service (San Diego L. & T. Co. vs. Jasper, 189 U. S. 439, 446). Clearly, courts should somewhat critically examine values which do not enter into furnishing the service paid for and there should be no presumption in favor of including them in the rate base. The burden is upon the company to show that

such inclusion is proper. That showing must be that the properties held for future expansion are in themselves [fol. 1966] adaptable to such expansion and that there is probable need of them for that purpose in the not too distant future. Property not needed for present requirements may properly be acquired and held for reasons which do not concern the rate payer—for example, such acquirement is not unusual either for the purpose of future sale to gain the increased increment of value caused by establishment of the industry or for the purpose of protecting the business from competition (see Public Service Comm. vs. Great Northern Util. Co., 289 U. S. 130, 135, and Columbus Gas Co. vs. Comm., 292 U. S. 398, 407). Such purposes have nothing to do with business expansion, therefore, the company must establish that the land is held really for expansion. Even if held for expansion, there must be showing of a reasonable need for such purposes. This need is a matter of strong probabilities and not mere possibilities or hopes. We examine here such probabilities as shown by the evidence.

Expansion is urged upon two theories, each affecting different tracts. One is for use to sell to packing houses, the other is to care for increased volume or change in method of handling stock at the yards. The first reason applies to tract D, the latter reason to the other tracts.

Tract D.—For convenience, this tract will be considered first because the expansion reason urged is peculiar to it and for a particular use while the three other tracts are urged for another reason. The expansion purpose urged for Tract D is use as a site for a packing house. The adaptability and location of this tract for such use is evident. The original planning of this stockyards included sites for packing plants alongside the western side of the yards. That space is entirely occupied by three large packing plants (Swift, Morris and Hammond) except for tract D. The desirability, in fact necessity, of the proximity of packing plants to a stockyard business is clear. They are the main buying strength of such a market. All of these three companies are long established at these stockyards. [fol. 1967] The evidence reveals but one packing company (a relatively small one) which plaintiff has had in mind to bring to the yards. The evidence shows, also, that this company has established itself elsewhere and is procuring

its needs from these yards. There is no showing of any prospect of having this tract occupied by a packing plant. The exclusion of this value by the Secretary is not shown to be erroneous and his action is approved.

Anchor Serum Company Tract and Tracts in Zones C and F.—The Anchor item involves 349,449 square feet in Zone B. The reasons urged for including this value for expansion purposes are to provide for growth in volume of business and/or for additional space because of change in method of handling stock. These same reasons are the ones urged for including the two other tracts (Zone C and Zone F), therefore, it will save reiteration to here state the general situation shown concerning expansion for such reasons and any provision therefor in the allowances of the Secretary.

Some of this testimony was taken in 1929 at the first hearing, much more since then at the hearing 1933. At the first hearing it appeared that since 1915, 12.22 acres had been used (in Zone A) in expansion but that this had been offset (in Zone A) by abandonment of practically an equal area formerly used for Southern Cattle and for a ten foot dead line space adjoining that area (this was caused by a new regulation of the Department concerning shipment of Southern Cattle); that this abandoned area joined both the cattle and the sheep pens and would be the space of logical expansion for either. At the second hearing it appeared that none of various plans of expansion put forth at the first hearing had been proceeded with. As to some of these plans, it was alleged they had been suspended for financial reasons, although it appeared that dividends had been paid (though reduced). It also then appeared that since the first hearings the only expansions had been in [fol. 1968] eight pens and some loading chutes covering a total area of 5,250 square feet (4,000 in the former dead line space and 1,250 in vacant space near the exchange building). As to present business (last hearing) the testimony was: that on "peak days" the receipts of stock required repeated use of the pens—the main objection to this being some dissatisfaction by customers; that hogs were increasingly coming in by trucks necessitating smaller pens for the smaller loads; that an increase in receipts of stock and in mode of bringing it in (by trucks) would overtax the capacity of the yards. The president and general manager

testified he contemplated no immediate expansion and would not venture a prediction as to when such would be necessary.

The Secretary allowed (as feed lots) 890,879 square feet (over 20 acres) in Zone A (tract 8 of 103,723 square feet and tract 24 of 383,410 square feet) and Zone B (O'Connell feed lots of 403,746 square feet). Tracts 8 and the O'Connell lots adjoin the hog pens while Tract 24 adjoins the former Southern Cattle space and is located for use either in connection with the cattle or the sheep pens.

When we consider: that no need for immediate expansion is shown; that no definite plans for expansion exist; that expansion in recent years has been slight; that the abandoned Southern Cattle tract affords almost as much area for expansion (as to cattle and sheep) as the company has used for expansion for all purposes since 1915, and is the logical area for cattle and sheep expansion; that Tract 8 (about 3⅓ acres) adjoins the hog pens and is available for expansion there, it is impossible to conclude that any showing of reasonably near or definite need of any lands in Zones B, C or F exists—much less the clear showing required to overthrow the determination of the Secretary. In this situation, it is unnecessary to examine each of these three tracts separately. It may be added, however, that there could be no shadow of reason for regarding Zone F as having any relation to present or near future needs for expansion; and that, as to Zone C, an officer of the com-
[fol. 1969] pany testified he was loking to its use twenty to fifty years ahead and that such use would involve removal of the intervening Belt Line tracks now owned by that railway.

(c) Minor Tracts

The "minor errors" claimed are seven items which will be separately treated.

Illinois Ave. extension in Zone A.—This is a narrow strip (25,613 square feet) extending west from Packers Avenue. It lies entirely between the packing plants of Swift and of Morris. Its only use is as parking space. It is used by any one desiring to use it without restriction. No control of its use is exercised by plaintiff. It is impossible to know who uses it but it is a fair inference that much of such use

is by employes of the packing companies. The open end of the strip is at Packers Avenue which is a roadway running between the packing houses and the yard pens. It is some distance removed from the exchange building. The use or usefulness of this land to the business of the yards is not clear. The usefulness of parking space for trucks bringing in hogs appears in the evidence and the location of this area (not far from the hog pens) might change the situation if this space were controlled by plaintiff and devoted to such truck parking but that is not the showing here. It is even more conveniently located to the two packing houses and is subject to use by the employes thereof. It is a narrow space so little adapted to truck parking that plaintiff is now considering an exchange of land which will enable it to widen this area and thus afford better facilities for truck parking. If this should result and the space be devoted to and controlled for such truck parking, a different situation would come into existence which might warrant inclusion of this area. Such is not now true. The exclusion by the Secretary is not shown to be erroneous and is sustained.

[fol. 1970] Drainage Ditch in Zone B.—This ditch drains the south portion of the truck hog dock, a portion of the elevator area and the water tank area (both in southeastern extension of Zone A). The use and usefulness of this drain is not disputed. The challenge here is the extent to which the land for it in the southeastern edge of Tract B was allowed. Plaintiff claims 53,232 square feet while the allowance was of only 11,400 square feet, the dispute is over the difference of 41,832 square feet. The issue is the amount of land reasonably needed for this open ditch. The evidence is unsatisfactory as to this matter. A witness for plaintiff in a table ("Respondent's Exhibit 135") of "allocation of uses" of all of the land of the company includes an item of "Drainage Ditch" with a notation of 53,232 square feet in Zone B. There is evidence as to the location, course and uses of this ditch but not one word further as to the land actually occupied by the ditch and its necessary banks or layout. However, we take this evidence as having the effect that 53,232 square feet was thus occupied. In treating this matter, the Secretary (finding 66) arrives at his figure of 11,400 square feet as follows: the tract is long and narrow and follows the Belt Railway tracks which it adjoins; it is approximately 950

feet long; "Government Exhibit 107 indicates that a strip of land 12 feet wide is ample to accommodate the ditch in question"; the area 950 feet long by 12 feet wide gives his result of 11,400 square feet. Exhibit 107 is a map of the entire property of plaintiff. We find no notation or other indication whatsoever thereon bearing upon any width of this ditch. We are trying to deal with actual conditions. The selection of 12 feet for width has no relation to reality and no hint of basis in the evidence. It is a purely arbitrary selection which makes the result based thereon just as arbitrary. This finding is unsupported by any evidence and cannot be sustained. The addition allowance is accorded for 41,832 square feet or a total allowance for drainage ditch [fol. 1971] in Zone B of 53,232 square feet.

Water tank in Zone B.—This is a trivial dispute over 529 square feet. Two large water tanks, found by the Secretary to be used in the business were located in Zone A. One of them is at the line of Zone B. The contention that some of the supports of this tank extend over the line into Zone B and occupy 529 square feet therein seems sustained. The Secretary intended to allow fully for the tanks and this seems merely a trivial oversight.

Feed Lots in Zone C.—Plaintiff contends that the allowance of the Secretary (78,190 square feet) for these feed lots was short 166,402 square feet as it should have been for 244,592 square feet. Christensen (for defendant) and Block (for plaintiff) testified as to this area. The Secretary accepted the figures of Christensen which analyzed this Zone with great detail and particularity (Gov. Ex. 107-A, Tract 12). This conflict was a matter for the Secretary which we do not disturb unless more is shown. Plaintiff contends more is shown in that the evidence of Christensen showed 150,728 square feet of feed lots while the Secretary found only 78,190. Counsel have misapprehended the action of the Secretary in this respect. This action is evidently based upon the evidence of Christensen as shown in Government Exhibit 107-A (Tract 12). Item "(42)" of this exhibit deals with the land in Zone C "occupied by buildings and equipment leased to Henry Rockhold." This is divided into eleven items with total square footage of 150,728. Instead of passing on this matter as a whole, the Secretary made separate findings as to four items (e, j, k and l) and then

made a lump finding and allowance (78,190 square feet) as to seven items. The net result of his action was to disallow the two items k and l (horse and wagon yards 36,693 square feet and old dock 6,800 square feet) and to allow the balance of the 150,728 square feet as three items (Rockhold feed lot 78,190, parking between Belt Railway and sheep barns 28,901 and meter house 144 square feet). Since this entire [fol. 1972] matter resolves into a decision upon conflicting evidence, it results that plaintiff has failed to show arbitrary action or clear error and the finding of the Secretary is sustained.

Drainage Ditch in Zone F.—This involves disallowance of any land value covering area of a drainage ditch in Zone F. This ditch is the extension of the ditch in Zone B, above considered. Starting in Zone A, this ditch runs southerly along the eastern and southeastern edge of Zone B until it crosses under the Belt Railway tracks where it enters Zone F and changes to a westerly course along the northern edge of that zone. It continues this course to about the northwestern corner of Zone F and shortly thereafter empties into Brown's Branch. Besides draining the area in Zone A, mentioned above, it later receives the drainage from Zone E (the entire area (444,927 square feet) of which was allowed by the Secretary as used and useful). Zone E adjoins Zone F along half of the northeastern side of F. The reason stated by the Secretary for disallowing this item is that "it appears" the ditch was "primarily used for draining the remainder of the land in the Zone (F) and only secondarily for carrying water accumulated from respondent's Zone B" (finding 78). The evidence is undisputed that this ditch drains a part of Zone A and Zones B, E and F. There is no evidence that it "primarily" drains Zone F. The evidence is undisputed that drainage of Zone A and E (both found useful) was necessary and that this ditch was the best and most economical method of doing so. The mere fact that it drains other land does not affect its usefulness to the above two zones and is no reason for excluding it—it would have to be used in its entirety to drain Zones A and E. The upper reaches of this ditch (in Zone B) were allowed by the Secretary. No reason appears in the evidence to differentiate that portion of the ditch in Zone F. The only evidence of the land necessary and used for this ditch in Zone F is 79,680 square feet. This

determination of the Secretary is not supported by any [fol. 1973] evidence and (in that sense) is arbitrary. The allowance is for 79,680 square feet.

Dump and Roadway in Zone L.—Zone L is bounded on one side by the Missouri River. There is a city public dump on the river bank in this Zone. The roadway is across Zone L from a city street to the dump. This roadway is leased to the city for public use in connection with the dump and is so used. The entire area of roadway and dump is 42,400 square feet of which the dump contains 21,900 square feet. While the contention here is broadly for inclusion of both roadway and dump, the footage claimed is 21,900 so it would seem the actual controversy is over the dump. This zone is quite removed from the yards, being some distance back of the packing houses (which face on the yards). The Secretary allowed a dump in Zone N. The reason urged for the allowance of this second dump is that it is needed for various kinds of refuse (such as large blocks of concrete, scrap iron and tin, coated asphalt, roofing, etc., constituting worn out materials from the yards construction) which cannot be dumped in the sewer. Necessity for a place to dump such character of material is evident. However it is evident that occasion for such is infrequent. The use of this tract as a public city dump and the slight use by plaintiff does not constitute a clear showing that the Secretary was wrong in excluding this item and his action is sustained.

Roadway in Zone N.—This item is the west half of Exchange Street from Lake Street south. Exchange Street is a public paved street. This portion is bounded by platted lots on the east and by Belt Railway property on the west. The contention is that this half of the street has never been dedicated to public use. It has been so used for at least 11½ years. The street is used by trucks bringing or taking stock. Obviously, this situation is far from a clear showing of error by the Secretary in disallowing this item and his action is sustained.

Summary of "Minor Errors."—The determinations of [fol. 1974] the Secretary are sustained as to these items except as to the following allowances: drainage ditch in Zone B, an additional allowance of 41,832 square feet making a total of 53,232 square feet; water tank in Zone B,

allowance of 529 square feet; drainage ditch in Zone F, allowance of 79,680 square feet.

Summary as to Amount of Land

The results of the above discussion as to the amount of land to be included in the rate base value are to sustain the Secretary except as to the three items noted in the just preceding paragraph which items are allowed.

(2) Value of Land

This contention is that the valuation of (16¢ per square foot) of Zone A by the Secretary should have been at least 24¢ per square foot. There is no attack upon the land valuations in other zones. The evidence as to land values was from five witnesses—two (Mack and Zelinski) called by the Government and three (Spratt, Atkinson and Quinn) called by the petitioner. The higher value contended for by petitioner is apparently based upon its present use as stockyards property and not merely upon the availability of the land for such use, which latter is the proper standard (Clark's Ferry Bridge Co. vs. P. S. Commission, 291 U. S. 227; Minnesota Rate Cases, 230 U. S. 352). While petitioner's brief (pp. 117-139) attacks the reasoning of the Secretary as shown in his report and also attacks the evidence of Zelinski in several respects, we have not been able to conclude that the Secretary was so clearly wrong that we should overthrow his conclusions. His report on this issue (Exh. A to petition, pp. 67-75) discloses an earnest attempt to consider and analyze all of the testimony of these five witnesses who testified as to land value. This evidence was conflicting and consisted mainly of expert opinions and statement of and analysis of sales in the vicinity made during various years up to 1929. From this evidence, the Secretary might, in exercising his judgment thereon as to value, have found a different figure—there was no possible [fol. 1975] exact demonstration of value—but we are not prepared to say that any figure we might reach (if we were the original trier of value) would be any truer than the one found by the Secretary. While petitioner contends that we should determine this issue de novo, we do not understand that to be our duty. In fact, we think we have no right or power so to act. The Congress has committed this issue of fact to the Secretary and our only duty is to keep his action

within reasonable bounds—that is, to prevent it being arbitrary. This means that petitioner has the burden of showing that such action is clearly and convincingly wrong. Petitioner has failed to convince us to that effect. We think the value of 16¢ per square foot for Zone A should be su-tained.

(3) Exclusion of Structures

The Secretary excluded the Terminal Hotel, a harness shop, a garage and a building used for publication of a stockyards journal as not used and useful property. Petitioner claims these exclusions denied them a value of $231,151.00 wrongfully. Apparently there was no exclusion of garages (Exh. A to pet. p. 38). The exclusion of the Hotel was proper and has been adverted to above under 1a. The harness shop was properly excluded for the reasons given by the Secretary (Exh. A p. 53, par. 83). We are not able to locate the evidence or the finding of the Secretary as to the building used for publication of the stockyards journal except in finding 126 which gives the detailed items of eliminated structures. We conclude all of these exclusions were proper.

(4) Value of Structures

The main contention, as to the value allowed by the Secretary to the various structures included in the rate base, is that too much depreciation was used. The Secretary used 76.04% as the condition of the structures while petitioner contends for 89% condition. We think the reasoning of the Secretary (Exh. A pp. 96-103, par. 137-148) is sustained. Certainly this was a matter of judgment and [fol. 1976] it is not clearly shown that the results reached by the Secretary are erroneous.

(5) Exclusion of "Pre-organization Expenses" and "Cost Financing"

It is claimed additions to the overhead for these (two items should have been allowed. The reasons of the Secretary (Exh. A. pp. 92-94, par. 133-135) are satisfactory. These expenses are purely accounting possibilities. No actual expenditures for these purposes were shown here (Dayton P. & L. Co. vs. Comm., 292 U. S. 290, 309-310). If shown we think they should not be allowed. The pre-

liminary expenses allowed by the Secretary (findings 128-132) were certainly all the allowances of that character which should have been made.

(6) Exclusion of Going Concern Value

The contention is there should have been a separate and distinct allowance for "going concern" value. The Secretary recognized that there was "an element of value in an assembled and established plant doing business and earning money over one not thus advanced" (finding 159) but said:

"Yet, the very impossibility of finding any reasonable rule or measure wherewith to determine, for rate making purposes, the amount of such value, bespeaks the impropriety of attempting to include in rate making valuations any separate allowances for that purpose. The elaboration which Howson gives to his method does not disguise the fact that in the end it is but a guess. An arbitrary percentage of other values leads to the illogical conclusions that the more a property costs the greater is its going-concern value, even though it may not be earning any net return upon its cost of reproduction new. In actuality, going-concern value is conceived to be the difference between the present fair value of the physical properties of a business, plus its working capital, and its actual net earnings capitalized at the going rate of money. The use of such a measure in rate proceedings would have the effect of destroying the result of the elaborate procedure which is undertaken to avoid using capitalized income as a basis [fol. 1977] for determination of the reasonableness of that income. This is why a separate allowance for the element of going concern has no place in valuation for rate making purposes. Attempts to substitute other methods have led to the confusing and illogical results which so generally characterize separate allowance to cover going-concern value.

160. Exclusion from the rate base of such separate allowance is not, however, tantamount to the failure to include therein anything for the going concern element. The very fact that the land used in the business has the value ascribed to it is because of its capacity for use as part of a going concern. The cost of reproduction new of structures is

not necessarily value, but only such when and as it relates to property used as a part of a going concern. The record in this case shows that it would cost more to reproduce respondent's structures on a desert, without means of transportation or livestock to market, but that, when so reproduced, they would be valueless. This is because it is the going concern element that transmutes cost of reproduction new into value. When respondent's structures are included in the rate base at the cost of reproduction new less depreciation, rather than scrap or junk value, it is because, and only because, they have inherent in them their use in a going, operating business. Thus, in the rate base herein found, there is included a large amount for going-concern value; but such value is so inextricably interwoven with other values that any attempt to segregate it and set it up alone would lead to a conclusion as arbitrary and illogical as usually is found when such attempts are made."

In Dayton P. & L. Co. vs. Comm., 292 U. S. 290, 308, the Court said:

"Objection is made that the going value of the appellant's business should have been included in the base. The decisions of this court show what going value means (Los Angeles Gas & Electric Corp. vs. Railroad Commis- [fol. 1978] sion of California, supra, p. 313), distinguish it from good will, and hold that upon proof of its existence it may have a place in the base upon which rates are to be computed. The Commission was of opinion that there was here no constituent of property that called for separate appraisal apart from the recognition that had been given it as a contributory factor in other elements of value."

In the same case (p. 309) it was further said:

"The Commission took the view that whatever increment of value had emerged from these sources was sufficiently reflected in the allowance of the cost of developing 'new business' and in the appraisal of the physical assets as parts of an assembled whole. A like conclusion has been reached by this court in very similar conditions. Los Angeles Gas & Electric Corp. vs. Railroad Commission of California, supra, p. 314. Going value is not something to be read into every balance sheet as a perfunctory addition. 'It calls for consideration of the history and circum-

stances of the particular enterprise.' Los Angeles Gas & Electric Corp. vs. Railroad Commission of California, supra, p. 314. Here the company was a small one and its organization simple. There was no diversified and complex business with ramifying subdivisions. We cannot in fairness say that after valuing the assets upon the basis of a plant in successful operation, there was left an element of going value to be added to the total. Even if the addition might have been made without departure from accepted principles, the omission to make it does not appear to have been so unreasonable or arbitrary as to overleap discretion and reach the zone of confiscation. 'It is necessary again, in this relation, to distinguish between the legislative and judicial functions.' Los Angeles case, supra, p. 314. Much that the framers of a schedule are at liberty to do, this court in the exercise of its supervisory jurisdiction may not require them to do. For the legislative process, at least [fol. 1979] equally with the judicial, there is an indeterminate penumbra within which choice is uncontrolled."

The only evidence as to this element of value was by witness Howson (for petitioner). The testimony of this witness as to the theory and methods he employed is set forth in the testimony at the first hearing beginning with p. 283 and is further commented on in his testimony at the second hearing beginning on p. 1019. His definition of "going concern" value and the matters upon which he deemed it to depend begins on p. 286 of first hearing. His methods are quite complicated and involve numerous assumptions as bases and various computations also resting largely on assumptions or upon information which is not made part of this record except by pure hearsay. In the end, this entire evidence of Howson is nothing more than an expert opinion resting upon rather shadowy bases of facts. The Secretary was not compelled to accept such evidence as final (Dayton P. & L. Co. vs. Comm. 292 U. S. 290, 299). Moreover, at least some of the elements considered by Howson seem to have been included in the valuation by the Secretary (see finding 136 which includes such items as interest during construction ($125,106) and taxes during construction ($18,257)—possibly also, insurance during construction ($10,618, $46, and $485). Even if there were grave doubt as to whether the Secretary had sufficiently

included "going concern" value, he cannot be held clearly wrong in not accepting the above evidence as a basis for allowing such value and there was no other evidence upon which he could have acted. We think, under the situation here, the action of the Secretary in this respect must be sustained.

(7) Depreciation Reserve

The findings of the Secretary (Nos. 173-177) lump repairs and depreciation reserve into one sum ($80,000). The answer herein admits that of this sum $41,500 was for depreciation reserve. Petitioner claims at least $100,000 for such reserve. The evidence is quite intricate and de- [fol. 1980] tailed. The evidence is, also, of course, in hopeless conflict. That of Government witness Bachman shows great care to discover the elusive fact of what and where there was depreciation not taken care of by repairs and he pursued his investigation to great detail. Also, he thoroughly examined and analyzed the showing of the books of the company as to these items. We think the analysis of his and other testimony on this point in the Government's brief is very convincing. The findings of the Secretary show earnest study and consideration of the evidence and a very apparent attitude of fairness. We think the Secretary is fully sustained as to this matter. We are certain there is no clear showing he was not right.

Rate Base Summary

The only change we make in the rate base found by the Secretary is the addition thereto of the value of the land which we have above set forth as improperly excluded by the Secretary. This land consists of 42,361 square feet (41,832 and 529) in Zone B and 79,680 square feet in Zone F. The value per square foot found by the Secretary for Zone B was 16 cents. No value was determined by the Secretary for Zone F since he entirely excluded that zone. Petitioner states in its brief (pp. 103-104) that "the average value of the three appraisers for Zone F was 4¢ per sq. ft." and apparently adopts that figure. The 42,361 square feet in Zone B would (at 16¢) be a value of $6,777.76. We are very doubtful of our power to find that the value in Zone F is 4 cents or any other figure as that is primarily a duty of the Secretary. However, it may be that if the

inclusion of this additional land in Zone F at 4 cents (which seems the value urged by petitioner) will not render the order invalid, we might as well so state and avoid a remand to the Secretary. It is difficult to see how petitioner can complaint if we adopt its figure. If this is to be done, the additional 79,680 square feet in Zone F will have a value of $3,187.20.

[fol. 1981] The rate base fair value was found by the Secretary to be $2,743,000 (finding 161). Adding $6,777.76 for the above land in Zone B this value is $2,749,777.76 and further adding $3,187.20 for the above land in Zone F the value is $2,752,964.96 (for convenience in round figures this might be stated as $2,753,000).

(B) Rate of Return

The Secretary determined a reasonable rate of return to be 7% (finding 170) which would yield net earnings of $192,010 on his rate base value of $2,743,000. If the above rate base value of $2,753,000 is adopted, the net yield at 7% would be $192,710.00. He then fixed the rate of charge for various services (some being unchanged, some lower and some higher) at figures which he estimated would produce a net income of $195,564.00 (finding 208). Petitioner contends that, considering the circumstances, locality and risk of its business, it should have a rate of return of 15% or 16%. It stresses, also, that the Secretary has allowed 7½% to two of its competitors at Denver and Omaha, respectively, and upon the first hearing (in 1929) allowed it 7½%. As usual, there is much conflict in the testimony—mostly expert opinion—as to this issue. The Secretary seems to have given careful consideration to the matter and we find nothing in the evidence which convinces he was so far wrong, if at all, that his determination should be overthrown.

(C) Test Period

The Secretary used an estimated future volume of business to test the net return which would probably be received. This he used to ascertain if the particular rate schedule covered by the order would yield a net return equal to 7%. In this estimate he states the numbers of different kinds of stock going to make up this volume. This estimate seems based upon actual receipts for the years 1928-1932.

A Comparison of the figures in the estimate (finding 201) with those of actual receipts for the above years (finding [fol. 1982] 195) convinces that his estimate is conservative if the actual receipts are at all any fair basis from which to reason. Petitioner attacks this period of experience as no proper criterion of the future volume. It is true that conditions were abnormal in 1933 and yet are so, but there is no way of prophesying the future except by the past. There may well be a reduced volume of receipts below the normal for the period chosen. However, what, if any, reduction will occur is a matter purely of opinion and we can see no reason for thinking our opinion or that of petitioner would be more accurate than that of the Secretary. Certainly this is not convincingly shown.

(D) Operating Expenses

Petitioner states this contention (brief p. 342) as follows:

"The right of the Secretary to revise and disallow petitioner's miscellaneous expenses, in the manner shown in paragraph 181 of the decision, is challenged in section IX (I) of the petition. The subject matter is covered in paragraphs 181-193a, pages 120-125, inclusive, of exhibit A to the petition. We shall discuss these exceptions more or less as a group.

Apparently based upon the allocation of expenses contained in paragraph 181, the decision, (par. 193b) allows $302,500 as reasonable miscellaneous operating expenses. In order to arrive at such a low figure, it was necessary to deduct the following amounts from the expenses of petitioner for each of the following years:

1927	$311,709.15
1928	317,365.31
1929	312,812.35
1930	257,969.78
1931	266,853.22
1932	241,673.98
6 year average	284,730.63

To compensate for that deduction, the decision allows $123,767 for taxes, repairs and depreciation. This leaves an average annual reduction of petitioner's expenses of $160,963. The only proper items of petitioner's expense

[fol. 1983] which should be deducted in considering its operating expenses are bond interest and discount, which, for the six years, averaged $48,760.07. Deducting this from the $160,963, leaves $112,203, which is the average amount by which the decision reduces petitioner's expenses in order to reduce its rates."

The amount found by the Secretary for operating expenses (excluding taxes and provision for depreciation and repairs—as to which there were separate allowances) was $302,500.00 (finding 193a). This figure is an average of the book showing of expense expenditures for each of the years 1927-1932, less certain eliminations which the Secretary deemed proper. The book figures are not in question but the propriety of disallowing the eliminated items is the problem.

The Secretary gives his reasons for each character of elimination (findings 182-193). A detailed list of book shown expenditures is shown in a table attached to finding 181. Checking this table with the findings (182-193) it is ascertained that the substantial "eliminations" consist of depreciation, taxes and repairs which are not really eliminated from total expense—these three items are eliminated from the $302,500 but they appear as separately allowed items (finding 193b). Two eliminations (bond interest and bond discount) are conceded by the petitioner. This leaves eight items (Miscellaneous Adm. expense, donations and subscriptions, insurance, fiscal agents registrars, etc., miscellaneous O. R. E. expense, casualty insurance O. R. E., costs of shoes sold (employes) bond issue expenses, and interest). In some instances, the Secretary eliminated the entire item; in others, he eliminated a portion of the amount. Some of these items do not appear for all of the above years. Eliminating the year 1930 when there was a "bond issue expense" elimination of $8,277.15 (the only other "bond issue expense" being $1,000.00 in 1931), the total of all of these items for any one year is less than $6,000.00. The reason given by the Secretary for each of these eliminations is satisfactory and supported by the evidence.

[fol. 1984] (E) Feed Lot Yardage Charge

The revenues received by petitioner are derived from a variety of different services rendered by it. Among these

services are yardage, furnishing of feed and bedding, loading and unloading, furnishing feed lots, and various lesser miscellaneous services (such as dipping and spraying, immunizing hogs and cattle disease testing). Separate and distinct charges (somewhat based on the worth of the particular service) are made for each of these services. The result is a schedule of rates covering these various charges. The matter considered by and acted upon by the Secretary was this schedule. Of course, the aggregate receipts from all of these charges constitute the gross income of petitioner from which a reasonable net income must be and was estimated by the Secretary. Naturally, the gross and net income involved the receipts from each service as an element entering into such income. Any change in existing rates of the schedule involves changes in all or in some of the separate rates.

The Secretary determined two matters which guided his action in fixing changes in charges in the existing rate schedule (*finding* 206). First, he found that the existing rates resulted in production of an excessive revenue; second, he found that:

"under the existing schedule shippers of livestock who consign their animals to commission men are charged more by the respondent for the use of its facilities in handling such livestock for a shorter period of time than are those who use that portion of its facilities hereinbefore referred to as feed lots for a much longer period of time."

His endeavor was both to reduce the charges to the production of a reasonable revenue and also to remove the above discrimination regarding "feed lot" services. His action resulted in lowering the charge for some services and [fol. 1985] *of* raising the charge for feed lot service—regarding the latter, the report states (finding 208) that the new schedule:

"assesses also on those to whom feed lot service is furnished a charge sufficient to cover repairs and depreciation and pay a fair return on the value of that portion of the property used exclusively by them, and does not levy these expenses mainly on other users of the facilities, as does the schedule now in effect."

The schedule so formed by him is set out in finding 207. The changes in these feed lot charges are as follows:

"Sheep Feeding	5c per head	to 38c per head
Hog Feed	5c " "	" 38c " "
Cattle Feed:		
Where land only is furnished	15c " "	" 60c " "
Where sheds and other enclosures are furnished	35c " "	" 60c " " ."

While the feed lot charges are spoken of as being "raised", it is not meant that it would be a violation of the order if petitioner charged less but it is an official declaration of the maximum permissible charge. Petitioner contends that this change in feed lot charges results in confiscation:

"because the evidence shows that the amounts recommended by the Secretary cannot be collected; because, in case the Secretary finds unjust discrimination, he must afford petitioner an alternative method of removal; and because the record is without evidence to support the recommended increased charges."

Petitioner's brief argues the above reasons quite ably but it seems to us that this argument is completely met by that in the brief of the Secretary (pp. 160-175). The evidence supports the position so stated by the Secretary.

Summary

We have found no error in the action of the Secretary except as to his exclusion from the rate base of certain land [fol. 1986] in Zones B and F. However, the inclusion of the value of this land, which we think was improperly excluded, is not of sufficient influence to materially affect the result (as to confiscation vel non) here involved. The effect of the inclusion of such land value is as follows:

Secretary's rate base value $2,743,000 plus such added land value ($9,964.96) gives rate base value of $2,752,964.96 —for round figures say $2,753,000. Net return at rate of 7% on such rate base is $192,710.00 which is only $700.00 more than the amount ($192,010) found necessary under

the rate base of the Secretary. Under the estimate of the Secretary (finding 208) the gross revenue is $621,831 and the expenses $426,267 leaving a net revenue of $195,564.00 which is slightly more than the above net return ($192,710) necessitated by inclusion of this land value.

Since the above memorandum contains specific findings, in detail, as to all matters of disputed facts and since a formal finding of facts could be only a restatement of fact conclusions set forth herein, the determination of facts herein is to be taken as the findings of facts—the result being, that this court adopts the findings of facts made by the Secretary with the exception of his findings as to the exclusion of certain land in Zones B and F, as to which we find that there should be added to the land in Zone B an addition of 41,832 square feet and of 529 square feet at a valuation of 16 cents per square foot, and in Zone F an addition of 79,680 square feet which we have considered (for the purposes of this case) to be valued at 4½ cents per square foot.

We think the temporary injunction should be vacated and the petition should be dismissed for want of equity.

[File endorsement omitted.]

[fol. 1987] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1988] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Oct. 7, 1935

Now comes appellant in the above entitled cause, by William N. Strack and Ross Dean Rynder, its solicitors, and files this statement of the points upon which appellant intends to rely and of the parts of the record which it thinks necessary for the consideration thereof, together with proof of service of same upon appellees.

Statement of Points to be Relied upon by Appellant

1. The district court erred in holding that the case should not be reopened for further hearing before the Secretary,

in accordance with appellant's petition to the Secretary of February 2, 1934, and in the court's findings of fact and conclusions of law in connection therewith, as specified in assignments of error Nos. 1, 2 and 3.

2. The district court erred in holding that findings of fact by the Secretary of Agriculture, if supported by substantial evidence, are conclusive upon the reviewing court, in cases where the constitutional issue of confiscation is involved; and in failing to apply its independent judgment to the law [fol. 1989] and the facts of this case, as specified in assignments of error Nos. 4 and 5.

3. The district court erred in failing to find that the value of the Transit House should be included in the value of appellant's property used and useful for stockyards purposes, upon the grounds and for the reasons specified in assignments of error Nos. 6-14, inclusive.

4. The district court erred in failing to find that the real and true value of appellant's land in zone A exceeded the value fixed by the Secretary by approximately $275,000, and in failing to exercise its independent judgment upon the facts and the law in connection therewith, as specified in assignments of error Nos. 15 and 16.

5. The district court erred in failing to find that the cost of reproduction new of appellant's structures less depreciation, as determined by the Secretary, was not supported by any legal evidence; in failing to exercise its independent judgment upon the facts and the law in connection therewith; and in failing to find that the action of the Secretary was arbitrary, beyond the statutory power of the Secretary, confiscatory, and void, as specified in assignments of error Nos. 17, 18, and 19.

6. The district court erred in failing to find that appellant's property, used and useful for stockyards purposes, has a substantial going concern value, in addition to the bare value of the land and structures; and that the finding of the Secretary as to appellant's going concern value was contrary to the evidence, confiscatory, and void, as specified in assignments of error Nos. 20-24.

7. The district court erred in failing to find that the annual allowance for a depreciation reserve fixed by the Secretary was inadequate, contrary to the evidence, beyond the

statutory powers of the Secretaary, confiscatory, and void; [fol. 1990] and in failing to exercise its independent judgment upon the law and the facts; for the reasons specified in assignments of error Nos. 25-50, inclusive.

8. The district court erred in failing to find that the value determined by the Secretary as a rate base for appellant's property used and useful for stockyards purposes was less by approximately $1,000,000 than the real and true value of said property, and was contrary to the evidence, confiscatory, and void, as specified in assignments of error Nos. 51 and 52.

9. The district court erred in failing to find that appellant's rates and charges were not unreasonable at the time of the hearing; that the Secretary was without statutory authority to reduce rates and charges which were reasonable at the time of the hearing; and that the order of the Secretary was therefore contrary to the statute, confiscatory, and void; for the reasons and to the extent specified in assignments of error Nos. 53-73, inclusive.

10. The district court erred in holding that a reduction in appellant's rates and charges could be predicated upon higer earnings by appellant in remote years, or upon mere speculation and hypothesis as to higher earnings in future years, as specified in assignments of error Nos. 53, 57, 60, 65, and 69.

11. The District court erred in failing to find that the confiscatory or non-confiscatory character of the rates and charges prescribed by the Secretary must be determined upon the facts as to the value of the property, appellant's income, and reasonable and proper expenses, as to the time of the hearing before the Secretary, as specified in assignments of error Nos. 54, 55, 56, 61, 64, 68, and 71.

[fol. 1991] 12. The district court erred in failing to find that the rates and charges prescribed by the Secretary would not have produced a fair return upon the fair value of appellant's property at the time of the hearing or during the period of six years prior to the hearing considered by the Secretary, as specified in assignments of error Nos. 53, 54, 55, 56, 58, 61, 63, 64, 66, 67, 68, and 71.

13. The district court erred in failing to find that the elimination of appellant's reasonable and proper operating

expenses by the Secretary was contrary to the evidence, beyond the statutory power of the Secretary, and therefore confiscatory and void, as specified in assignments of error Nos. 74-77, inclusive.

14. The district court erred in failing to find, with respect to the feed lot yardage charges prescribed by the Secretary, that the findings of the Secretary with respect to the amounts of such charges and the finding that such charges were discriminatory, were unsupported by any evidence of record, speculative, and contrary to the evidence; and beyond the statutory power of the Secretary, in that the order of the Secretary did not afford appellant an alternative method of removing the discrimination stated by the Secretary, as specified in assignments of error Nos. 78-82, inclusive.

15. The district court erred in failing to find that at the time of the hearing appellant was applying a reweighing charge equivalent to that prescribed by the Secretary upon all shipments of live stock to which such charge could be applied under the Secretary's order; that therefore appellant could not obtain from such charges as were prescribed by the Secretary the increased revenue contemplated in the decision and order of the Secretary; and that the Secre- [fol. 1992] tary's findings in respect thereto were speculative, contrary to the evidence, and beyond the statutory power of the Secretary; upon the grounds and for the reasons specified in assignments of error Nos. 83-87, inclusive.

16. The district court erred in failing to find that in the year (1932) immediately preceding the hearing, which was the last year for which appellant's income and expenses were included in the record before the Secretary, the rates and charges prescribed by the Secretary would have produced net operating income of only 3.9 per cent upon the value of appellant's property, used and useful for stockyards purposes, as determined by the Secretary, as specified in assignments of error Nos. 88-93, inclusive.

17. The district court erred in failing to find that the decision and order of the Secretary do not contain the findings of fact necessary to support the prescribed reduction in appellant's net operating income, as specified in assignments of error Nos 53, 54, 55, 58, 60, 61, 64, 66, 68, 69, 72, and 73.

18. The district court erred in failing to find that the reductions prescribed by the Secretary in appellant's rates and charges are based solely upon conjecture and hypothesis as to appellant's future income and expenses, contrary to the facts of record at the time of the hearing, and are therefore arbitrary, confiscatory, and void, as specified in assignments of error Nos. 60, 69, 80, 83, and 85.

19. The district court erred in failing to find that the specific reductions and increases in appellant's rates and charges, prescribed by the Secretary, were unsupported by any evidence of record before the Secretary, and were therefore arbitrary, beyond the statutory power of the Secretary, confiscatory, and void, as specified in assignment of error No. 72.

[fol. 1993] 20. The district court erred in failing to find independently the facts, and to exercise its independent judgment upon the law and the facts, as they relate to (1) the application to reopen; (2) the Transit House; (3) land value; (4) value of structures; (5) going concern value; (6) annual allowance for a depreciation reserve; (7) rate base summary; (8) test period; (9) receipts of live stock and net operating income for the year 1932 and for the years 1927-1932, inclusive; (10) operating expenses; and (11) feed lot yardage charges, as specified in assignments of error Nos. 88-94, inclusive.

21. The district court erred in finding that the record made in the hearings before the Secretary of Agriculture and the findings of the Secretary were sufficient, in law and fact, to support the order made by the Secretary on May 4, 1934.

22. The district court erred in finding that the petition of appellant herein should be dismissed; in failing to issue the permanent injunction prayed for in said petition; and in entering its final decree herein of May 1, 1935.

Designation of Parts of Record to be Printed

Appellant hereby designates for printing the entire transcript of record herein (except such portions of the condensed narrative statement of record as are not included in the stipulation of counsel herein, dated September 11, 1935, and which have been deleted in red pencil in the three

[fol. 1994] volumes of the narrative statement of evidence attached to said stipulation) which appellant thinks necessary for consideration in determining the appeal herein, but not including the original exhibits which have been certified to this Court separately and not as part of said transcript of record.

William N. Strack, R. D. Rynder, Counsel for Appellant.

Acknowledgment of Service

Service of the foregoing statement of points to be relied upon by appellant upon the appeal herein and designation of parts of the record to be printed, and receipt of a copy thereof, are hereby admitted and acknowledged this 7th day of October, 1935.

Wendell Berge, Counsel for the United States of America and the Secretary of Agriculture.

[fol. 1995] [File endorsement omitted.]

Endorsed on cover: File No. 40,051. W. Missouri, D. C. U. S. Term No. 497. St. Joseph Stock Yards Company, appellant, vs. The United States of America and the Secretary of Agriculture. Filed October 7, 1935. Term No. 497, O. T., 1935.